

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/1. THE LEGISLATION/(1) INTRODUCTION/301. Scope of the title.

## **HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)**

### **1. THE LEGISLATION**

#### **(1) INTRODUCTION**

##### **301. Scope of the title.**

In this title the general statutory provisions relating to the safety, health and welfare of persons at work<sup>1</sup> are expounded, and particularly the statutory provisions relating to work and workplaces generally<sup>2</sup>; to factories<sup>3</sup>; to offices, shops and railway premises<sup>4</sup>; to mines<sup>5</sup> and quarries<sup>6</sup>; to docks<sup>7</sup>; to offshore installations<sup>8</sup>; and to agriculture<sup>9</sup>. Provisions relating to working time or to shop hours and Sunday trading are not included<sup>10</sup>; nor are provisions relating to fire safety dealt with in detail in this title<sup>11</sup>.

Safety, health and welfare in relation to the following matters are dealt with elsewhere in this work: atomic energy<sup>12</sup>, foodstuffs<sup>13</sup>, petroleum<sup>14</sup>, pipelines<sup>15</sup>, railways<sup>16</sup>, the supply of electricity and gas<sup>17</sup>, the carriage of dangerous substances<sup>18</sup>, the thermal insulation of buildings<sup>19</sup> and road traffic<sup>20</sup>. The general duties of persons in control of certain premises in relation to harmful emissions into the atmosphere are also separately treated<sup>21</sup>.

Persons who suffer injury or damage to themselves or their property by reason of business activities carried on by others may have a remedy in tort according to the general principles of the law relating to, for example, negligence or nuisance<sup>22</sup>. The principles of the law of negligence are discussed briefly in this title<sup>23</sup> and both those principles and the principles of the law of nuisance are expounded in detail elsewhere in this work<sup>24</sup>.

Workers who disclose information that the health or safety of any individual has been, is being or is likely to be endangered are given statutory protection from being dismissed or penalised by their employers by Part IVA of the Employment Rights Act 1996<sup>25</sup>, which is discussed elsewhere in this work<sup>26</sup>.

1 See generally the Health and Safety at Work etc Act 1974 Pt I (ss 1-54); and PARA 420 et seq.

2 In particular, statutory instruments (1) made under the Health and Safety at Work etc Act 1974 s 15, and of general applicability to all work and to all work processes, except as is provided in the particular instrument; for examples see the Management of Health and Safety at Work Regulations 1999, SI 1999/3242; and PARA 428 et seq; the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004; and PARA 456 et seq; the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306; and PARA 482 et seq; (2) implementing European Community directives and made under the European Communities Act 1972 s 2; for examples see the Lifts Regulations 1997, SI 1997/831; and PARAS 562-563; the Personal Protective Equipment Regulations 2002, SI 2002/1144; and PARAS 567-568.

3 See principally the Factories Act 1961; and PARAS 306 et seq, 845 et seq, 861 et seq. Many of the specific provisions of the 1961 Act have, however, now been repealed and replaced by general regulations such as those described in note 2.

- 4 See principally the Offices, Shops and Railway Premises Act 1963; and PARAS 326 et seq, 873 et seq. Many of the specific provisions of the 1963 Act have, however, now been repealed and replaced by general regulations such as those described in note 2.
  - 5 See principally the Mines and Quarries Acts 1954 and 1969; the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013; the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897; and PARA 748 et seq.
  - 6 See principally the Quarries Regulations 1999, SI 1999/2024; and PARA 838 et seq.
  - 7 See principally the Docks Regulations 1988, SI 1988/1655; and PARA 706 et seq.
  - 8 See PARA 720 et seq. Such installations are 'premises' for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54): see s 53(1); and PARA 302 note 6.
  - 9 See PARAS 745-747; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1246 et seq. Many of the specific provisions formerly relating to health and safety in agriculture have, however, now been repealed or revoked and replaced by general regulations such as those described in note 2: see PARA 344.
  - 10 As to working time see **EMPLOYMENT**; as to Sunday trading see **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 et seq.
  - 11 As to fire precautions and fire safety see generally PARA 660; and **FIRE SERVICES**.
  - 12 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1337 et seq.
  - 13 See **FOOD**.
  - 14 See the Petroleum (Consolidation) Act 1928; the Petroleum (Transfer of Licences) Act 1936; the Petroleum (Regulation) Acts 1928 and 1936 (Repeals and Modifications) Regulations 1974, SI 1974/1942; the Petroleum (Consolidation) Act 1928 (Enforcement) Regulations 1979, SI 1979/427; the Petroleum Act 1998; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; FUEL AND ENERGY**.
  - 15 See **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 559.
  - 16 As to health and safety on the railways see PARA 844; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195 et seq.
  - 17 See **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 706 et seq.
  - 18 See generally **CARRIAGE AND CARRIERS**.
  - 19 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 16.
  - 20 As to road safety see generally **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARAS 221-223. See also **HIGHWAYS, STREETS AND BRIDGES**.
  - 21 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; NUISANCE**.
  - 22 Thus, there is a nuisance where a factory emits noxious fumes causing damage: see *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642 (noxious vapours from copper smelting); and *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683 (emission of acid smuts from oil distribution depot). There is also a nuisance where noise or vibration is caused which materially interferes with the ordinary comfort of human existence (*Crump v Lambert* (1867) LR 3 Eq 409; affd 17 LT 133, LC; and see *Halsey v Esso Petroleum Co Ltd* (noise from boilers and road tankers at oil distribution depot)), or where a river is polluted by the discharge of effluent (*Stockport Waterworks Co v Potter* (1861) 7 H & N 160; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA (heated effluent and sewage discharged in river)). Under the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, an occupier may incur liability for damage caused by the escape of dangerous matter brought and collected on his land: see further **NUISANCE** vol 78 (2010) PARA 148 et seq.
- Certain nuisances (eg those caused by smoke) are statutory nuisances under environmental legislation: see generally **NUISANCE** vol 78 (2010) PARA 155 et seq. Special provisions apply to the disposal of poisonous waste: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 624.
- 23 See PARAS 412, 414.
  - 24 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; NEGLIGENCE; NUISANCE; WATER AND WATERWAYS**.

25     le the Employment Rights Act 1996 Pt IVA (ss 43A-43L).

26     See **EMPLOYMENT** vol 39 (2009) PARAS 56-57.

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## **(2) GENERAL LEGISLATION**

### **(i) Domestic Legislation**

#### **A. THE HEALTH AND SAFETY AT WORK ETC ACT 1974**

##### **302. The Health and Safety at Work etc Act 1974; in general.**

Health, safety and welfare in connection with work<sup>1</sup> are regulated by Part I of the Health and Safety at Work etc Act 1974<sup>2</sup>, which includes a statement of the general duties of employers<sup>3</sup>, employees<sup>4</sup>, self-employed persons<sup>5</sup>, those in control of non-domestic premises<sup>6</sup>, and manufacturers and suppliers of articles and substances for use at work<sup>7</sup>. The Act provides for making health and safety regulations<sup>8</sup> and for the preparation and approval of codes of practice<sup>9</sup>. These provisions have effect with a view to enabling existing legislation<sup>10</sup> to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of Part I of the Act and designed to maintain or improve the standards of health, safety and welfare established by or under such legislation<sup>11</sup>.

The replacement of the existing statutory provisions<sup>12</sup> is the function of the Secretary of State<sup>13</sup> and he has power to repeal or modify the existing statutory provisions<sup>14</sup> and to make health and safety regulations for the general purposes of Part I of the Act<sup>15</sup>.

Health and safety regulations of general application to particular processes have generally repealed statutory provisions of application to particular industries<sup>16</sup> and revoked regulations designed to regulate particular trades as opposed to particular processes<sup>17</sup>. Whereas before 1974 the definition of a trade, industry or premises (for example foundry work<sup>18</sup>; factory<sup>19</sup>) was often critical in determining which legislative provisions were applicable, since 1974 the critical question is increasingly that of the status of employment, and whether activities were conducted 'at work'<sup>20</sup>. European directives provide a framework for regulations made under the Health and Safety at Work etc Act 1974<sup>21</sup>.

A Health and Safety Executive has been established<sup>22</sup>, under the Secretary of State's control, with powers which include the approval and issue of codes of practice for the purpose of providing practical guidance with respect to specified statutory provisions<sup>23</sup>. Subject to the powers of other authorities, the enforcement of the relevant statutory provisions<sup>24</sup> is the responsibility of the Health and Safety Executive<sup>25</sup>.

1 'Work' means work as an employee or self-employed person: Health and Safety at Work etc Act 1974 s 52(1)(a). An employee (defined in note 4) is at work throughout the time when he is in the course of his employment, but not otherwise (s 52(1)(b)) and a self-employed person (defined in note 5) is at work throughout such time as he devotes to work as a self-employed person (s 52(1)(c)). Nothing in Pt I (ss 1-54) applies in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household: s 51. The expressions 'work' and 'at work', in whatever context, must be construed accordingly (s 52(1)), but regulations may be made by the Secretary of State to extend the meanings of 'work' and 'at work' for the purposes of Pt I (s 52(2), (3) (s 52(3) substituted by the Employment Protection Act 1975 s 116, Sch 15 para 17; and amended by SI 2002/794)). The meaning of 'work' has been extended by regulations: see eg the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 4; and PARA 738 note 5; the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 4; and PARA 600; the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(3)(a); and PARA 648 note 1; the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 23(2); and PARA 428 note 2;

and the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 19; and PARA 622 note 22.

For the purposes of the Health and Safety at Work etc Act 1974 Pt I, (1) the meaning of the word 'work' is extended to include relevant training; (2) a person provided with relevant training is at work throughout the time when he would be in the course of his employment if he were receiving such training under a contract of employment, but not otherwise, and the meaning of 'at work' is to be so extended; and in that connection, in the other relevant statutory provisions, 'work' and 'at work' are to be construed accordingly: Health and Safety (Training for Employment) Regulations 1990, SI 1990/1380, reg 3. 'Relevant training' means work experience provided pursuant to a training course or programme, or training for employment, or both, except if (a) the immediate provider of the work experience or training for employment is an educational establishment and it is provided on a course run by the establishment; or (b) received under a contract of employment; and 'educational establishment' means a university, [former] polytechnic, college, school or similar educational or technical institute: reg 2. As to the meaning of 'relevant statutory provisions' see note 24.

2 See the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), all of which was in operation by 1 April 1975: s 85(2); Health and Safety at Work etc Act 1974 (Commencement No 1) Order 1974, SI 1974/1439, art 2, Schs 1-3 (by which the Health and Safety at Work etc Act 1974 Pt IV (ss 77-85) was also brought into force).

Repeals and modifications of existing enactments have been made by regulations under the Act. See eg the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941; the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943; the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013; the Agriculture (Safety, Health and Welfare Provisions) Act 1956 (Repeals and Modifications) Regulations 1975, SI 1975/46; the Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975, SI 1975/1011.

Certain functions under the Health and Safety at Work etc Act 1974 are relevant functions for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

3 As to the general duties of employers to their employees and to other persons see **EMPLOYMENT**.

4 'Employee' means an individual who works under a contract of employment or is treated by the Health and Safety at Work etc Act 1974 s 51A as being an employee, and related expressions are to be construed accordingly: s 53(1) (definition amended by the Police (Health and Safety) Act 1997 s 6(1)). For the purposes of the relevant statutory provisions (see note 24) a person provided with relevant training (see note 1) is to be treated as being the employee of the person whose undertaking (whether carried on by him for profit or not) is for the time being the immediate provider to that person of the training; and 'employee', 'worker', 'employer' and related expressions in those provisions are to be construed accordingly: Health and Safety (Training for Employment) Regulations 1990, SI 1990/1380, reg 4. As to the general duties of employees and others at work see PARA 446; and **EMPLOYMENT**.

For the purposes of the Health and Safety at Work etc Act 1974 Pt I, a person who, otherwise than under a contract of employment, holds the office of constable or an appointment as police cadet is to be treated as an employee of the relevant officer (s 51A(1) (s 51A added by the Police (Health and Safety) Act 1997 s 1)). See further the Health and Safety at Work etc Act 1974 s 51A(2)-(4) (as so added; amended by the Serious Organised Crime and Police Act 2005 ss 59, 158(1), Sch 4 para 20; and the Police and Justice Act 2006 ss 1(3), 52, Sch 1 Pt 7 para 54, Sch 15 Pt 1(A)); and **POLICE** vol 36(1) (2007 Reissue) PARA 406.

5 'Self-employed person' means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others: Health and Safety at Work etc Act 1974 s 53(1). As to the general duties of the self-employed to their employees and to other persons see **EMPLOYMENT**.

6 'Domestic premises' means premises occupied as a private dwelling, including any garden, yard, garage, outhouse or other appurtenance of such premises not used in common by the occupants of more than one such dwelling, and 'non-domestic premises' is to be construed accordingly: Health and Safety at Work etc Act 1974 s 53(1). 'Premises' includes any place, particularly (1) any vehicle, vessel, aircraft or hovercraft; (2) any installation on land (including the foreshore and land intermittently covered by water), any offshore installation and any other installation, whether floating, resting on the seabed or its subsoil or resting on other land covered with water or its subsoil; and (3) any tent or movable structure: s 53(1). 'Offshore installation' means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation: s 53(1).

7 'Article for use at work' means (1) any plant designed for use or operation, whether exclusively or not, by persons at work; and (2) any article designed for use as a component in any such plant; and 'plant' includes machinery, equipment or appliance: Health and Safety at Work etc Act 1974 s 53(1). 'Substance' means any natural or artificial substance (including micro-organisms), whether in solid or liquid form or in the form of a gas or a vapour; and 'micro-organism' includes any microscopic biological entity which is capable of replication: s 53(1) (definition of 'substance' amended and definition of 'micro-organism' added by the Consumer Protection Act 1987 s 36, Sch 3 para 7).

8 See the Health and Safety at Work etc Act 1974 s 15; and PARAS 424-425.

9 'Code of practice', without prejudice to the Health and Safety at Work etc Act 1974 s 16(8) (see PARA 426), includes a standard, a specification and any other documentary form of practical guidance: s 53(1). As to codes of practice see s 16; and PARA 426.

10 See note 12.

11 See the Health and Safety at Work etc Act 1974 s 1(2) (amended by the Employment Protection Act 1975 Sch 15 para 1, Sch 18).

12 The 'existing statutory provisions' are defined by the Health and Safety at Work etc Act 1974 s 53(1), Sch 1 (amended by the Sex Discrimination Act 1975 s 83(3), Sch 5 para 3; the Sex Discrimination Act 1986 s 9(2), Schedule Pt III; the Atomic Energy Act 1989 s 6(3); by virtue of the Offshore Safety Act 1992 ss 1(1), (3), 2(1), (3), the Railways Act 1993 ss 117(1), (4) and the Gas Act 1995 Sch 4 para 10; and amended by SI 2005/228 and SI 2005/1082; and prospectively amended by the Fireworks Act 2003 s 15, Schedule) as, while and to the extent that they remain in force, the following Acts (including regulations, orders or other instruments of a legislative character made or having effect under any specified provision): (1) the Explosives Act 1875 except ss 30-32, 80 (prospectively repealed) and 116-121 (see **EXPLOSIVES**); (2) the Employment of Women, Young Persons and Children Act 1920 (see PARA 337); (3) the Celluloid and Cinematograph Film Act 1922 (see **BUILDING** vol 4(2) (2002 Reissue) PARA 451 et seq); (4) the Petroleum (Consolidation) Act 1928 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1625); (5) the Petroleum (Transfer of Licences) Act 1936; (6) the Ministry of Fuel and Power Act 1945 s 1(1) so far as it relates to maintaining and improving the safety, health and welfare of persons employed in or about mines and quarries in Great Britain; (7) the Mines and Quarries Act 1954 except s 151 (see PARAS 343, 393, 395, 877 et seq; and **MINES, MINERALS AND QUARRIES**); (8) the Agriculture (Safety, Health and Welfare Provisions) Act 1956 (for the extant provisions see PARAS 745-747); (9) the Factories Act 1961 except s 135 (which is now repealed) (see PARAS 306 et seq, 318 et seq, 355-356, 390-391, 481, 845-849, 861 et seq); (10) the Public Health Act 1961 s 73; (11) the Offices, Shops and Railway Premises Act 1963 (see PARAS 326 et seq, 357-359, 873-876); (12) the Nuclear Installations Act 1965 ss 1, 3-6, 22, 24A and Sch 2 (now repealed except in relation to Northern Ireland) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1392, 1487 et seq); (13) the Mines and Quarries (Tips) Act 1969 ss 1-10 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 540 et seq); and (14) the Employment Medical Advisory Service Act 1972 (except ss 1, 6, Sch 1 (repealed)).

The following repealed legislation is also included in the statutory definition: the Boiler Explosions Act 1882; the Boiler Explosions Act 1890; the Alkali, etc Works Regulation Act 1906; the Revenue Act 1909 s 11; the Public Health (Smoke Abatement) Act 1926; the Hours of Employment (Conventions) Act 1936 except s 5 (repealed); the Hydrogen Cyanide (Fumigation) Act 1937; the Coal Industry Nationalisation Act 1946 s 42(1), (2); the Radioactive Substances Act 1948 s 5(1)(a); the Alkali, etc Works Regulation (Scotland) Act 1951; the Agriculture (Poisonous Substances) Act 1952; the Pipe-lines Act 1962 ss 20-26, 33, 34, 42, Sch 5; and the Mines Management Act 1971.

The Health and Safety at Work etc Act 1974 Pt I has effect as if the provisions mentioned in the Railways Act 1993 s 117(4) (which relate to the proper construction and safe operation of certain transport systems, and of the vehicles used on those systems, and the protection of railway employees or the general public from personal injury and other risks arising therefrom) were existing statutory provisions, within the meaning of that Part and, in the case of the enactments mentioned in the Railways Act 1993 s 117(4)(a)-(m) (see heads (a)-(m) below), were specified in the Health and Safety at Work etc Act 1974 Sch 1 col 3: Railways Act 1993 s 117(1). The provisions referred to are (a) the Highway (Railway Crossings) Act 1839; (b) the Railway Regulation Act 1842 ss 9, 10 (s 10 now repealed); (c) the Regulation of Railways Act 1868 s 22 (now repealed); (d) the Regulation of Railways Act 1871 (now repealed); (e) the Regulation of Railways Act 1889 ss 1, 4; (f) the Railway Employment (Prevention of Accidents) Act 1900 (now repealed); (g) the Road and Rail Traffic Act 1933 s 42; (h) the British Transport Commission Act 1954 s 40 (now repealed); (i) the British Transport Commission Act 1957 s 66 (now repealed); (j) the Transport Act 1968 ss 124, 125 (now repealed); (k) the Level Crossings Act 1983; (l) the Transport and Works Act 1992 ss 41-45; (m) any regulations made under the European Communities Act 1972 s 2 for the purpose of implementing EC Council Directive 91/440 (OJ L237, 24.08.1991, p 25) of 29 July 1991 on the development of the Community's railways, so far as the regulations are made for safety purposes: Railways Act 1993 s 117(4). For consequential amendments of certain railways etc legislation see s 117(5).

As to the 'relevant statutory provisions' see note 24.

13 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and see PARA 349 et seq.

14 See the Health and Safety at Work etc Act 1974 s 15(3)(a); and PARA 425.

15 Health and Safety at Work etc Act 1974 s 15(1) (substituted by the Employment Protection Act 1975 Sch 15 para 6; and amended by SI 2002/794); and see PARA 424. As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I see PARA 303.

16 Thus the Provision and Use of Work Equipment Regulations 1992, SI 1992/3932 (now revoked and replaced by the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see PARA 482 et seq), repealed the Factories Act 1961 ss 12-17, 19, the Offices Shops and Railway Premises Act 1963 s 17, and the Mines and Quarries Act 1954 ss 81(1), 82; revoked various regulations such as the Agriculture (Power Take-Off) Regulations 1957, SI 1957/1386; and introduced general requirements as to, eg, the guarding of machinery. The Personal Protective Equipment at Work Regulations 1992, SI 1992/2966 (see PARA 523 et seq), revoke such regulations as the Protection of Eyes Regulations 1974, SI 1974/1681, and the Aerated Water Regulations 1921, SR & O 1921/1932, and introduce general requirements as to the provision, wearing and use of personal protective equipment at work. The Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (see PARA 456 et seq), repeal the Factories Act 1961 ss 1-7, 18, 28, 29, 57-60, 69, the Offices, Shops and Railway Premises Act 1963 ss 4-16, and the Agriculture (Safety, Health and Welfare Provisions) Act 1956 ss 3, 5, 25(3), (6), and revoke such regulations as the Iron and Steel Foundries Regulations 1953, SI 1953/1464, and the Horizontal Milling Machines Regulations 1928, SR & O 1928/548, and introduce requirements applicable to almost all workplaces. The Manual Handling Operations Regulations 1992, SI 1992/2793 (see PARA 583), repeal eg the Factories Act 1961 s 72, and revoke such regulations as the Agriculture (Lifting of Heavy Weights) Regulations 1959, SI 1959/2120.

17 See eg those statutory instruments and regulations referred to in note 16.

18 Eg in the Iron and Steel Foundries Regulations 1953, SI 1953/1464 (revoked).

19 Eg in the Factories Act 1961 s 175: see PARA 318.

20 See eg the definition of 'workplace' in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (see PARA 456); and that of 'personal protective equipment' in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 2(1) (see PARA 523), both of which relate the definition to 'work' (as to which see note 1).

21 See PARAS 341-342.

22 As to the establishment of the Health and Safety Executive see PARA 361.

23 As to the approval of codes of practice by the Health and Safety Executive see PARA 426.

24 The 'relevant statutory provisions', unless the context otherwise requires, means (1) the provisions of the Health and Safety at Work etc Act 1974 Pt I and of any health and safety regulations; and (2) the existing statutory provisions (defined in note 12): s 53(1) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 18, Sch 18).

The Health and Safety at Work etc Act 1974 ss 16-21, 23, 24, 26, 28, 33, 34, 36-39, 42(1)-(3) and 46, the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see PARA 367) and the Health and Safety (Training for Employment) Regulations 1990, SI 1990/1380 (see note 1), apply as if any references therein to health and safety regulations or to the relevant statutory provisions included references to the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513 (see PARA 451): reg 10.

25 See further PARAS 361-371.

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### **303. Purposes of Part I of the Health and Safety at Work etc Act 1974.**

The provisions of Part I of the Health and Safety at Work etc Act 1974<sup>1</sup> have effect with a view to:

- 1 (1) securing the health, safety and welfare of persons at work<sup>2</sup>;
- 2 (2) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work<sup>3</sup>; and
- 3 (3) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances<sup>4</sup> and generally preventing their unlawful acquisition, possession and use<sup>5</sup>.

The general purposes of Part I of the Act include the purpose of protecting persons from risks, protection from which is afforded by the amendments made to that part of the Act by the Consumer Protection Act 1987<sup>6</sup>, and further purposes have been added by the Offshore Safety Act 1992, so that the purposes now include:

- 4 (a) securing the safety, health and welfare of persons on offshore installations or engaged on pipeline works;
- 5 (b) securing the safety of such installations and preventing accidents on or near them;
- 6 (c) securing the proper construction and safe operation of pipelines and preventing damage to them;
- 7 (d) securing the safe dismantling, removal and disposal of offshore installations and pipelines<sup>7</sup>;
- 8 (e) securing that, in the event of the accidental escape or ignition of anything in a pipeline, immediate notice of the event is given to persons who will or may have to discharge duties or take steps in consequence of the happening of the event;
- 9 (f) protecting the public from personal injury, fire, explosions and other dangers arising from the transmission, distribution, supply or use of gas<sup>8</sup>.

If to any extent they would not otherwise do so, the general purposes of Part I of the Health and Safety at Work etc Act 1974 also include:

- 10 (i) securing the proper construction and safe operation of any railway, tramway or trolley vehicle system or of any transport system using any other mode of guided transport, and of any locomotives, rolling stock or other vehicles used, or to be used, on those systems<sup>9</sup>; and
- 11 (ii) protecting the public, whether passengers or not, from personal injury and other risks arising from the construction and operation of such transport systems<sup>10</sup>.

For the purposes of Part I of the Health and Safety at Work etc Act 1974, risks arising out of or in connection with the activities of persons at work must be treated as including risks attributable to the manner of conducting an undertaking, the plant<sup>11</sup> or substances used for the purposes of an undertaking and the condition of premises so used or any part of them<sup>12</sup>.



1 See the Health and Safety at Work etc Act 1974 Pt I (ss 1-54); and PARA 302. References to the 'general purposes of this Part' of the Act are references to the purposes set out in s 1(1) (see heads (1)-(3) in the text): ss 1(4), 53(1).

2 Health and Safety at Work etc Act 1974 s 1(1)(a). As to the meaning of 'at work' see PARA 302 note 1.

3 Health and Safety at Work etc Act 1974 s 1(1)(b).

4 As to the meaning of 'substance' see PARA 302 note 7. For the purposes only of enabling regulations under the Health and Safety at Work etc Act 1974 s 15 (see PARAS 424-425) to be made to implement any obligation imposed by any of the Directives (as defined in this note), or to deal with any matter arising out of or related to any such obligation, the reference to dangerous substances in s 1(1)(c) has effect as if it included a reference to environmentally hazardous substances: Health and Safety at Work etc Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002, SI 2002/282, reg 3. The 'Directives' (see reg 2 (amended by SI 2004/463; SI 2005/1308; SI 2007/1332; and SI 2009/318)) means:

- 1 (1) EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) on the approximation of the laws of member states with regard to the transport of dangerous goods by road (amended by EC Parliament and EC Council Directive 2000/61 (OJ L279, 01.11.2000, p 40)) and, adapting it to technical progress, EC Commission Directive 96/86 (OJ L335, 24.12.1996, p 43), EC Commission Directive 99/47 (OJ L169, 05.07.1999, p 1), EC Commission Directive 2001/7 (OJ L30, 01.02.2001, p 43), EC Commission Directive 2003/28 (OJ L90, 08.04.2003, p 45), EC Commission Directive 2004/111 (OJ L365, 10.12.2004, p 25) and EC Commission Directive 2006/89 (OJ L305, 4.11.2006, p 4);
- 2 (2) EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) on the approximation of the laws of member states with regard to the transport of dangerous goods by rail (amended by EC European Parliament and EC Council Directive 2000/62 (OJ L279, 01.11.2000, p 44)) and, adapting it to technical progress, EC Commission Directive 96/87 (OJ L335, 24.12.1996, p 45), EC Commission Directive 99/48 (OJ L169, 05.07.1999, p 58), EC Commission Directive 2001/6 (OJ L30, 01.02.2001, p 42), EC Commission Directive 2003/29 (OJ L90, 08.04.2003, p 47), EC Commission Directive 2004/89 (OJ L293, 16.9.2004, p 14), EC Commission Directive 2004/110 (OJ L365, 10.12.2004, p 24) and EC Commission Directive 2006/90 (OJ L 305, 4.11.2006, p 6);
- 3 (3) European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.1994, p 24) on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations;
- 4 (4) EC Council Directive 96/35 (OJ L145, 19.06.1996, p 10) on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway;
- 5 (5) European Parliament and EC Council Directive 1999/45 (OJ L200, 30.07.1999, p 1) on the approximation of the laws, regulations and administrative provisions of the member states relating to the classification, packaging and labelling of dangerous preparations and, adapting it to technical progress, EC Commission Directive 2001/60 (OJ L226, 22.08.2001, p 5);
- 6 (6) European Parliament and EC Council Directive 2000/18 (OJ L118, 19.05.2000, p 41) on minimum examination requirements for safety advisers for the transport of dangerous goods by road, rail or inland waterway; and
- 7 (7) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13) on the inland transport of dangerous goods (replacing, as from 30 June 2009, EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7), EC Council Directive 96/35 (OJ L145, 19.06.1996, p 10), EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) and European Parliament and EC Council Directive 2000/18 (OJ L118, 19.05.2000, p 41)).

'Environmentally hazardous substances' means substances which are dangerous to the environment (whether or not they are already within the Health and Safety at Work etc Act 1974 s 1(1)(c) as dangerous substances): Health and Safety at Work etc Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002, SI 2002/282, reg 2.

5 Health and Safety at Work etc Act 1974 s 1(1)(c) (amended by the Environmental Protection Act 1990 s 162, Sch 16 Pt I).

6 See the Health and Safety at Work etc Act 1974 s 6; and PARA 531. The amendments came into force on 1 March 1988: Consumer Protection Act 1987 (Commencement No 1) Order 1987, SI 1987/1680.

7 Offshore Safety Act 1992 s 1(1)(a)-(d).

8 Offshore Safety Act 1992 s 2(1)(a)-(c).

9 The transport systems to which the Railways Act 1993 s 117 applies: see s 117(2), (6). The definitions of 'guided transport', 'tramway', 'trolley vehicle system' and 'vehicle' in the Transport and Works Act 1992 s 67(1) have effect for these purposes as they have effect for the purposes of that Act: Railways Act 1993 s 117(7). The definition of 'railway' in the Transport and Works Act 1992 s 67(1) has effect for these purposes as it has effect for the purposes of that Act, but disregarding the second part of the definition (which includes a condition as to the minimum gauge of the track): Railways Act 1993 s 117(7). See further **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 302.

10 Railways Act 1993 s 117(2).

11 As to the meaning of 'plant' see PARA 302 note 7.

12 Health and Safety at Work etc Act 1974 s 1(3).

## **UPDATE**

### **303 Purposes of Part I of the Health and Safety at Work etc Act 1974**

NOTE 4--Head (5): from 1 June 2015, Directive 1999/45 is repealed and replaced by European Parliament and EC Council Regulation 1272/2008 on classification, labelling and packaging of dangerous substances and mixtures (OJ L353, 31.12.2008 p 1): art 60. For full transitional provisions see: art 61.

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### 304. Application to the Crown.

With certain exceptions<sup>1</sup>, the provisions of Part I of the Health and Safety at Work etc Act 1974<sup>2</sup>, and of regulations made under that Part, bind the Crown<sup>3</sup>. The Secretary of State may<sup>4</sup>, to the extent that it appears to him requisite or expedient to do so in the interests of the safety of the state or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in particular respects from all or any of the provisions of Part I of the Act which would otherwise<sup>5</sup> bind the Crown<sup>6</sup>.

The statutory provisions relating to improvement and prohibition notices and to an inspector's power to deal with causes of imminent danger<sup>7</sup> and the provisions regarding offences<sup>8</sup> do not, however, bind the Crown<sup>9</sup>, although the latter provisions apply to persons in the public service as they apply to other persons<sup>10</sup>. Alternative non-statutory procedures exist for the issue of Crown improvement and prohibition notices<sup>11</sup> and for the censure of Crown bodies in circumstances in which a prosecution would otherwise have been brought<sup>12</sup>.

1 See the text and notes 7-10.

2 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54).

3 Health and Safety at Work etc Act 1974 s 48(1). As to legal proceedings against the Crown see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 110 et seq. Nothing in s 48 authorises proceedings to be brought against Her Majesty in her private capacity; such capacity includes Her Majesty in right of the Duchy of Lancaster and includes the Duke of Cornwall: s 48(6), applying the Crown Proceedings Act 1947 s 38(3). The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the Health and Safety at Work etc Act 1974 s 48(1)-(4): National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, 2007/1353, art 2.

4 The power is without prejudice to the Health and Safety at Work etc Act 1974 s 15(5), which empowers the making of health and safety regulations providing for exemptions from requirements of the relevant statutory provisions (see PARA 425): s 48(4). As to the Secretary of State see PARA 349 et seq; and as to the 'relevant statutory provisions' see PARA 302 note 24.

5 I.e. by virtue of the Health and Safety at Work etc Act 1974 s 48(1): see the text and notes 1-3.

6 Health and Safety at Work etc Act 1974 s 48(4). The power to make such an order is exercisable by statutory instrument, and any such order may be varied or revoked by a subsequent order: s 48(5).

The power of the Secretary of State under s 48(4) includes power to provide for exemptions, in relation to designated premises for the purposes of the Atomic Weapons Establishment Act 1991, or activities carried on by a contractor at such premises, from all or any of the relevant statutory provisions within the meaning of the Health and Safety at Work etc Act 1974 Pt I (see PARA 302 note 24); and such designated premises and the activities carried on by a contractor at such premises are to be treated as premises occupied, and as activities carried on by, the Crown for the purposes of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see PARAS 370, 372): Atomic Weapons Establishment Act 1991 Schedule para 7; Interpretation Act 1978 s 17.

7 I.e. the Health and Safety at Work etc Act 1974 ss 21-25: see PARAS 377-380.

8 I.e. the Health and Safety at Work etc Act 1974 ss 33-42: see PARA 852 et seq.

9 Health and Safety at Work etc Act 1974 s 48(1). The Crown is no longer immune in respect of national health service authorities and premises: see the National Health Service and Community Care Act 1990 s 60; and **HEALTH SERVICES** vol 54 (2008) PARAS 94, 136.

10 Health and Safety at Work etc Act 1974 s 48(2). For the purposes of Pt I, and regulations made under it, persons in the service of the Crown are to be treated as employees of the Crown whether or not they would be so treated apart from s 48(3): s 48(3).

11 See *Health and Safety Offences and Penalties 2004-2005: a Report by the Health and Safety Executive* Table 4. Crown improvement notices and Crown prohibition notices require the same action from Crown employers as would be required from other employers under statutory improvement and prohibition notices.

12 See *Health and Safety Executive Prosecutions Database* (available online at [www.hse.gov.uk/Prosecutions/documents/crowncensures.htm](http://www.hse.gov.uk/Prosecutions/documents/crowncensures.htm)). A Crown censure is the formal recording of a decision by the Health and Safety Executive that, but for Crown immunity, there would have been sufficient evidence of a Crown body's failure to comply with health and safety law to provide a realistic prospect of conviction in the courts and that prosecution would have been in the public interest. Twenty-one such censures were issued between May 1999 and October 2007. As to the Health and Safety Executive see PARA 361 et seq.

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### **305. Territorial application.**

Part I of the Health and Safety at Work etc Act 1974<sup>1</sup> extends to Northern Ireland<sup>2</sup>. In its application to the Isles of Scilly, Part I applies as if they were a local government area and their council were a local authority<sup>3</sup>.

The provisions of Part I may be applied, with or without modification, by Order in Council, to such extent and for such purposes as may be specified in the Order, to or in relation to persons, premises<sup>4</sup>, work<sup>5</sup>, articles, substances<sup>6</sup> and any other matters outside Great Britain<sup>7</sup> as those provisions apply within Great Britain or within a part of Great Britain so specified<sup>8</sup>. The Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001<sup>9</sup>, made under this power, provides that the prescribed provisions of the 1974 Act<sup>10</sup> are to apply, to the extent specified in that Order<sup>11</sup>, to and in relation to the premises and activities<sup>12</sup> outside Great Britain which are so specified as those provisions apply within Great Britain<sup>13</sup>. The specified premises and activities are:

- 12 (1) offshore installations<sup>14</sup> within the territorial sea<sup>15</sup> or a designated area<sup>16</sup> and certain activities on or in connection with them<sup>17</sup>;
- 13 (2) wells<sup>18</sup> within the territorial sea or a designated area and any activity connected with them, and certain preparatory activities connected with them<sup>19</sup>;
- 14 (3) pipelines, pipeline works and certain activities in connection with pipeline works within the territorial sea or a designated area<sup>20</sup>;
- 15 (4) mines within the territorial sea or extending beyond it and any activity connected with them while they are being worked<sup>21</sup>; and
- 16 (5) certain other activities within the territorial sea<sup>22</sup>.

1 The Health and Safety at Work etc Act 1974 Pt I (ss 1-54).

2 Health and Safety at Work etc Act 1974 s 84(1)(a). Part IV (ss 77-85) also extends to Northern Ireland so far as may be necessary to enable health and safety regulations under s 15 (see PARAS 424-425) to be made: s 84(1)(a) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 20, Sch 18).

3 Health and Safety at Work etc Act 1974 s 54. 'Local authority' means (1) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple; (2) in relation to Wales, a county council or a county borough council: s 53(1) (amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994, ss 22(3), 66(8), Sch 13 para 93(3), Sch 18).

4 As to the meaning of 'premises' see PARA 302 note 6.

5 As to the meaning of 'work' see PARA 302 note 1.

6 As to the meaning of 'substance' see PARA 302 note 7.

7 'Great Britain' includes England, Scotland and Wales: see the Union with Scotland Act 1706, preamble art I; and the Interpretation Act 1978 s 22(1), Sch 2 para 5(a).

8 Health and Safety at Work etc Act 1974 s 84(3). Such an order may (1) make different provision for different circumstances or cases (s 84(4)(a)); (2) provide for provisions applied outside Great Britain (see the text to notes 1-6) to apply to individuals whether or not they are British subjects and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom (s 84(4)(b)); (3) make provision for conferring jurisdiction on any court or class of courts specified in the order with respect to offences

under Pt I committed outside Great Britain or with respect to causes of action arising by virtue of s 47(2) (see PARA 416) in respect of acts or omissions taking place outside Great Britain and for the determination, in accordance with the law in force in such part of Great Britain as may be specified, of questions arising out of such acts or omissions (s 84(4)(c)); and (4) exclude proceedings for the offences under any provision of Pt I committed outside Great Britain from the operation of the Territorial Waters Jurisdiction Act 1878 s 3 (consents required for prosecutions: see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) (Health and Safety at Work etc Act 1974 s 84(4)(d)). Such an order may be varied or revoked by a subsequent order (s 84(4)(e)) and is subject to annulment in pursuance of a resolution of either House of Parliament (s 84(4)). Any jurisdiction conferred on any court under s 84 is without prejudice to any jurisdiction exercisable apart from s 84 by that or any other court: s 84(6). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

If an Order in Council is made under the Health and Safety at Work etc Act 1974 s 84(3) providing that s 15 (see PARA 424) is to apply to or in relation to persons, premises or work outside Great Britain, then, notwithstanding the order, health and safety regulations do not apply to or in relation to aircraft in flight, vessels, hovercraft or offshore installations outside Great Britain or persons at work outside Great Britain in connection with submarine cables or submarine pipelines, except in so far as the regulations expressly so provide: s 15(9).

9 le the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127: see the text and notes 10-22.

10 le the Health and Safety at Work etc Act 1974 ss 1-59, 80-82: see the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 2(1). The prescribed provisions of the 1974 Act apply in accordance with the 2001 Order to individuals whether or not they are British subjects, and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom: art 10. 'Prescribed' means prescribed by regulations made by the Secretary of State: Health and Safety at Work etc Act 1974 s 53(1). As to the Secretary of State see PARA 349 et seq.

11 le to the extent specified in the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 3(2)-11: see the text and notes 14-22.

12 The reference in the text to premises and activities includes a reference to any person, article or substance on those premises or engaged in or, as the case may be, used or for use in connection with any such activity, but does not include a reference to an aircraft which is airborne: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 3(2). For these purposes, 'activity' includes a diving project; and 'diving project' has the same meaning as it has in the Diving at Work Regulations 1997, SI 1997/2776 (see PARA 591 note 1), save that it includes an activity in which a person takes part as a diver wearing an atmospheric pressure suit and without breathing in air or other gas at a pressure greater than atmospheric pressure: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 2(1).

13 Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 3(1).

14 For these purposes, 'offshore installation' means, subject to the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4(3), a structure which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered with water: (1) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well; (2) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored; (3) for the conveyance of things by means of a pipe; or (4) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this head or of heads (1)-(3) above, together with any supplementary unit which is ordinarily connected to it, and all the connections: arts 2(1), 4(2) (art 4(2) amended by SI 2009/1750). Any reference in the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4(2) to a structure or unit does not, however, include: (a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes; (b) a well; (c) a structure which has ceased to be used for any of the purposes specified in art 4(2) and has since been used for a purpose not so specified; (d) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in art 4(2); and (e) any part of a pipeline: arts 2(1), 4(3). 'Supplementary unit' means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation; and 'vessel' includes a hovercraft and any floating structure which is capable of being staffed: art 2(1). As to wells see further note 18.

15 'Territorial sea' means the territorial sea adjacent to Great Britain and 'within the territorial sea' includes on, over and under it: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 2(1).

16 'Designated area' means any area designated by order under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); and 'within a designated area' includes over and under it: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 2(1).

17 See the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4(1). The prescribed provisions of the Health and Safety at Work etc Act 1974 (see note 10) apply within the territorial sea or a designated area to and in relation to (1) any offshore installation and any activity on it; (2) any activity in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, in or from a vessel or in any other manner, other than (a) transporting, towing or navigating the installation; and (b) any activity in or from a vessel being used as a stand-by vessel; (3) a diving project involving (a) the survey and preparation of the seabed for an offshore installation; (b) the survey and restoration of the seabed consequent on the removal of an offshore installation: art 4(1). 'Stand-by vessel' means a vessel which is ready to give assistance in the event of an emergency on or near an offshore installation: art 2(1).

18 For these purposes, any structures and devices on top of a well are to be treated as forming part of the well: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 2(2).

19 See the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 5. Subject to art 5(2), the prescribed provisions of the Health and Safety at Work etc Act 1974 (see note 10) apply within the territorial sea or a designated area to and in relation to (1) a well and any activity in connection with it; and (2) an activity which is immediately preparatory to any activity in head (1): Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 5(1). Article 5(1) includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation: art 5(2).

20 See the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6. The prescribed provisions of the Health and Safety at Work etc Act 1974 (see note 10) apply within the territorial sea or a designated area to and in relation to (1) any pipeline; (2) any pipeline works; (3) the following activities in connection with pipeline works: (a) the loading, unloading, fuelling or provisioning of a vessel; (b) the loading, unloading, fuelling, repair and maintenance of an aircraft in a vessel, being in either case a vessel which is engaged in pipeline works: Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6(1). For these purposes, 'pipeline' means a pipe or system of pipes for the conveyance of any thing, together with (i) any apparatus for inducing or facilitating the flow of any thing through, or through part of, the pipe or system; (ii) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system; (iii) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system; (iv) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (i)-(iii) above; (v) apparatus for the transmission of information for the operation of the pipe or system; (vi) apparatus for the cathodic protection of the pipe or system; and (vii) a structure used or to be used solely for the support of a part of the pipe or system; but not including a pipeline of which no initial or terminal point is situated in the United Kingdom, within the territorial sea adjacent to the United Kingdom, or within a designated area; and 'pipeline works' means (A) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it; (B) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline; (C) changing the position of or dismantling or removing a pipeline or length of pipeline; (D) opening the bed of the sea for the purposes of the works mentioned in heads (A)-(C) above, and tunnelling or boring for those purposes; (E) any activities incidental to the activities described in heads (A)-(D) above; (F) a diving project in connection with any of the works mentioned in heads (A)-(E) above or for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for settling the route of a proposed pipeline: art 6(2).

21 Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 7(1). For these purposes, 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see PARA 343 note 1) and a mine is to be treated as being worked when it is to be so treated for the purposes of that Act (see s 182(3)(a); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 513): Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 7(2), (3).

22 See the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 8. Subject to art 8(2), the prescribed provisions of the Health and Safety at Work etc Act 1974 (see note 10) apply within the territorial sea to and in relation to (1) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any building, energy structure or other structure, not being in any case a vessel, or any preparation for any such activity; (2) the transfer of people or goods between a vessel or aircraft and a structure (including a building) mentioned in head (1) above; (3) the loading, unloading, fuelling or provisioning of a vessel; (4) a diving project; (5) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of a vessel except when carried out by the master or any officer or member of the crew of that vessel; (6) the maintaining on a station of a vessel which would be an offshore installation were it not a structure to which the Health and Safety at Work etc

Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4(3)(d) (see note 14 head (iv)) applies; (7) the operation of a cable for transmitting electricity from an energy structure to Great Britain; (8) the transfer of people or goods between a vessel or aircraft and a structure mentioned in head (6) above: art 8(1). Article 8(1) does not apply (a) to a case where art 4, 5, 6 or 7 applies; or (b) to vessels which are registered outside the United Kingdom and are on passage through the territorial sea: art 8(2). 'Energy structure' means a fixed or floating structure, other than a vessel, for producing energy from wind or water: art 2(1). Until 6 April 2011 (unless an order is made revoking these provisions from an earlier date), the prescribed provisions also apply to certain activities within a designated area (see art 8A (added by SI 2009/1750)) and to certain activities within a renewable energy zone (see the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 8B (added by SI 2009/1750)). 'Renewable energy zone' means any area designated by order under the Energy Act 2004 s 84(4) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1310): Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 8B(3) (as so added).

Proceedings for any offence under the Health and Safety at Work etc Act 1974 s 33 (see PARAS 852-853), being an offence to which that provision applies by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain: art 9(1). The Territorial Waters Jurisdiction Act 1878 s 3 (which requires certain consents for the institution of proceedings) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) does not apply to proceedings for any offence to which the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 9(1) relates: art 9(2). Nothing in the 2001 Order except art 9(2) is to be taken to limit or prejudice the operation which any Act or legislative instrument may, apart from that Order, have in the territorial sea or elsewhere: art 11.



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## **B. THE FACTORIES ACT 1961**

### **(A) APPLICATION OF THE**

#### **306. Factory legislation.**

The principal statute in force specifically concerning factories<sup>1</sup> is the Factories Act 1961<sup>2</sup>, which is a consolidating Act superseding a number of earlier statutes<sup>3</sup>, the most important of which were the Factories Acts 1937 to 1959<sup>4</sup>. Much of the detailed legislation regulating factory premises and processes, and other premises and processes to which such legislation extends, was contained in subordinate legislation now largely revoked and replaced by more general regulations made under the Health and Safety at Work etc Act 1974<sup>5</sup> and many of the provisions of the Factories Act 1961 relating to health, safety and welfare have now been repealed by subordinate legislation made under that 1974 Act<sup>6</sup>.

The provisions set out in the following paragraphs<sup>7</sup> are largely concerned with technical issues regarding the application of the Factories Act 1961. The remaining substantive health and safety obligations of that Act relate to:

- 17 (1) medical examination of employees<sup>8</sup>;
- 18 (2) precautions as respects water-sealed gasholders<sup>9</sup>;
- 19 (3) certificates of fitness for work of young persons<sup>10</sup>;
- 20 (4) notices and the keeping of registers etc<sup>11</sup>.

There are also a number of extant provisions relating to offences and penalties, which are discussed in a later part of this title<sup>12</sup>.

1 The Factories Act 1961 and subordinate legislation made or continued under it, so far as still extant, also regulate premises and operations which are not, in the ordinary sense, factory premises or operations: see PARA 307 et seq.

2 The Factories Act 1961 came into force on 1 April 1962: s 185(2). It does not extend to Northern Ireland: s 185(3) (amended by the Statute Law (Repeals) Act 1974). Consequent upon the coming into force of the Health and Safety at Work etc Act 1974 many of the provisions of the Factories Act 1961 have been repealed: see the text and note 6. As to the Health and Safety at Work etc Act 1974 generally see PARA 302 et seq.

Certain functions under the Factories Act 1961 are relevant functions for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

3 See the Factories Act 1961 s 183(2), Sch 7 (repealed), repealing the Lead Paint (Protection Against Poisoning) Act 1926, the Employment of Women and Young Persons Act 1936, the Factories Acts 1937 to 1959, and the Slaughterhouses Act 1958 s 7.

4 Those statutes comprised the Factories Act 1937, the Factories Act 1948 and the Factories Act 1959: Factories Act 1959 s 34(1) (repealed).

5 For the provisions relating to the making of subordinate legislation under the Factories Act 1961 see PARA 356. Any order, regulation, rule, byelaw or appointment made, direction, certificate or notice given, or other thing done under any provision contained in an enactment repealed by the Factories Act 1961 or by an enactment so repealed, continues in force, and, if it could have been made, given or done under the corresponding provision of the 1961 Act, it has effect as if it had been so made, given or done: Factories Act

1961 s 183(1), Sch 6 para 2(a). This provision may validate subordinate legislation which was ultra vires the repealed statute: *Franklin v Gramophone Co Ltd* [1948] 1 KB 542 at 551, [1948] 1 All ER 353 at 356, CA, obiter per Scott LJ. Any power conferred to make an order includes power to revoke such an order by a subsequent order, and the provisions of the Health and Safety at Work etc Act 1974 s 50 (see PARA 350) apply to a power to make regulations: Factories Act 1961 s 180(4) (amended by SI 1974/1941). Any order made under the Defence (General) Regulations 1939, SR & O 1939/927, reg 59 (revoked) which was in force at the commencement of the Factories Act 1961 (ie 1 April 1962: see note 2) continues in force, subject to revocation by order of the minister: Sch 6 para 7. Any provision made by an order so continued in force which could have been made by special regulations under s 117 is deemed, until the order is revoked, to be contained in such regulations: Sch 6 para 7. Section 117 provides for orders to be made granting exemptions from the Hours of Employment (Conventions) Act 1936 (now repealed). Subordinate legislation thus continued in force should be interpreted as before: see *Garcia v Harland and Wolff Ltd* [1943] 1 KB 731, [1943] 2 All ER 477; *Canadian Pacific Steamships Ltd v Bryers* [1958] AC 485, [1957] 3 All ER 572, HL; cf the contrary dictum of Lord Goddard CJ in *Massey-Harris-Ferguson (Manufacturing) Ltd v Piper* [1956] 2 QB 396 at 402, [1956] 2 All ER 722 at 726, DC.

If such an order or regulation as is referred to above is made under a power which, under the corresponding provision of the Factories Act 1961, is exercisable by a different class of instrument, it has effect as if it were an instrument of that class made under that provision: Factories Act 1961 Sch 6 para 2(b).

Some enactments, in so far as they relate to employment in factories, are deemed to be incorporated in the Factories Act 1961, and must be construed as one with that Act: see the Interpretation Act 1978 s 17(2)(a), which is applied generally to the Factories Act 1961 Sch 6 (see Sch 6 para 8, referring to the Interpretation Act 1889 s 38 (repealed)); and **STATUTES**. See eg the Employment of Women, Young Persons, and Children Act 1920 s 1(6), which refers to the Factory and Workshop Acts 1901 to 1911, now replaced by the Factories Act 1961. References in any enactment to a factory or workshop within the meaning of the Factory and Workshop Acts 1901 to 1929, or any of those Acts, must be construed as references to a factory within the meaning of the Factories Act 1961 (Factories Act 1961 s 184(1) (amended by the Local Government and Rating Act 1997 s 33(2), Sch 4)); and any reference in any enactment or document, whether express or implied, to any enactment repealed by the Factories Act 1961 or by any enactment so repealed or to any provision contained in any such enactment must be construed as a reference to the Factories Act 1961 or, as the case may be, its corresponding provision (Sch 6 para 1). As to the meaning of 'factory' see PARA 318. Since the Factories Act 1961 is a consolidating statute, it is presumed that the existing law was not intended to be altered, and regard may therefore be had to cases which decide the interpretation to be placed upon the statutes which were consolidated therein: see *Mitchell v Simpson* (1890) 25 QBD 183, CA; and **STATUTES**. However, in *Farrell v Alexander* [1977] AC 59, [1976] 2 All ER 721, HL, it was held that recourse should only be had to an Act's antecedents in cases of real or substantial difficulty or ambiguity. Where an Act confers power to make any instrument, expressions used in the instrument must, unless the contrary intention appears, be given the same meaning as in the Act: see the Interpretation Act 1978 ss 11, 22, Sch 2 para 1. In construing expressions which are not defined, either in the instrument or in the enabling Act, it must be presumed that if they are used in the same context they are intended to bear the same meaning in both the instrument and the Act: *Potts (or Riddell) v Reid* [1943] AC 1, [1942] 2 All ER 161, HL.

6 As to the supersession of provisions of the Factories Act 1961 by regulations see PARA 425 note 3; and see also PARAS 302, 424.

7 See PARA 307 et seq.

8 See the Factories Act 1961 s 10A; and PARA 848.

9 See the Factories Act 1961 s 39; and PARA 513.

10 See the Factories Act 1961 s 119; and PARA 847.

11 See the Factories Act 1961 s 141; and PARAS 390-391.

12 See PARA 861 et seq.

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### **307. General application of the Factories Act 1961.**

Except where the Factories Act 1961 otherwise expressly provides<sup>1</sup>, the provisions of that Act apply only to factories as defined in the Act<sup>2</sup>, but, except where the contrary intention appears, those provisions apply to all such factories<sup>3</sup>.

Where a part of a building, which is not a tenement factory<sup>4</sup>, is let off as a separate factory<sup>5</sup>, certain provisions of the Act apply to any part of the building used for the purposes of the factory but not comprised in it<sup>6</sup>.

1 See eg the Factories Act 1961 ss 123-127; and PARA 309 et seq.

2 As to the meaning of 'factory' see PARA 318 et seq.

3 Factories Act 1961 s 172.

4 As to the meaning of 'tenement factory' see PARA 865 text to notes 1-3.

5 As to what is a separate factory see PARA 320.

6 See the Factories Act 1961 s 122; and PARA 866.

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### **308. Application to Crown factories and works.**

The Factories Act 1961 applies to factories<sup>1</sup> belonging to or in the occupation of the Crown, to building operations<sup>2</sup> and works of engineering construction<sup>3</sup> undertaken by or on behalf of the Crown, and to the employment by or under the Crown of persons in painting buildings<sup>4</sup>; but in case of any public emergency the Health and Safety Executive<sup>5</sup> may, by order<sup>6</sup>, to the extent and during the period named in the order, exempt from the Act any such factory, building operation or works of engineering construction undertaken by or on behalf of the Crown, or any factory in respect of work which is being done on behalf of the Crown<sup>7</sup>.

The duties under the Factories Act 1961 of a district council or other local authority<sup>8</sup> are exercised by an inspector under the Act in the case of a factory belonging to or in the occupation of the Crown, or building operations or works of engineering construction undertaken by or on behalf of the Crown; and any notice required to be sent to a district council must, in any such case, be sent to the authorised inspector<sup>9</sup>.

1 As to the meaning of 'factory' see PARA 318 et seq.

2 As to the meaning of 'building operations' see PARA 315 note 1.

3 As to the meaning of 'works of engineering construction' see PARA 315 note 1.

4 The factories, operations and works referred to in the text to notes 1-3 are not excluded from the operation of the Factories Act 1961 by reason only that they are not carried on by way of trade or for gain: see PARA 323.

5 As to the general functions of the Health and Safety Executive see PARA 367.

6 For provisions as to orders see PARA 356.

7 Factories Act 1961 s 173(1). The power of exemption in case of emergency has effect also in respect of factories belonging to or occupied by the service authorities of a visiting force or an international headquarters, and any operations or works undertaken by or on behalf of such authorities or a headquarters: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 13; and **ARMED FORCES** vol 2(2) (Reissue) PARA 142.

8 It seems that local authorities no longer have specific functions under the Factories Act 1961: see PARA 373.

9 Factories Act 1961 s 173(2) (amended by SI 1974/1941). As to inspectors see PARA 375.

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### **309. Application to electrical stations.**

The provisions of the Factories Act 1961 apply to premises in which persons are regularly employed in or in connection with the processes or operations of generating, transforming or converting, or of switching, controlling or otherwise regulating electrical energy for supply by way of trade<sup>1</sup>, or for supply for the purposes of any transport undertaking or other industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places, as if the premises were a factory and the employer of those employed persons were the occupier<sup>2</sup> of a factory<sup>3</sup>. Where in such premises there are comprised office premises to which the Offices, Shops and Railway Premises Act 1963 applies<sup>4</sup>, then for the purpose of the foregoing provision those office premises are deemed not to form part of the premises<sup>5</sup>.

In any other premises where any of the processes or operations mentioned above is carried on or performed for supply as described, being premises large enough to admit the entrance of a person after the machinery or plant is in position, certain provisions of the Factories Act 1961 apply to the premises as if the premises were a factory and the employer of any person employed there, in or in connection with such processes or operations, were the occupier of a factory<sup>6</sup>. The provisions so applied relate to offences, penalties and legal proceedings<sup>7</sup> and the application and interpretation of the Act<sup>8</sup>.

The Secretary of State may, by regulations, apply any of the provisions already mentioned<sup>9</sup> to any machinery or plant used in the processes or operations and for the supply referred to<sup>10</sup> which is used elsewhere than in the premises described<sup>11</sup>, as if it were machinery or plant in a factory, and as if the employer of any person employed in connection with it were the occupier of a factory<sup>12</sup>.

Except in so far as the Secretary of State may by regulations direct, neither the Factories Act 1961 nor those provisions of it already mentioned<sup>13</sup> apply to any premises where the processes or operations are only carried on or performed for the immediate purpose of working an electric motor or working any apparatus which consumes electrical energy for lighting, heating, transmitting or receiving messages or communications, or other purposes<sup>14</sup>.

1 As to the meaning of 'by way of trade' see PARA 318 note 14.

2 As to the meaning of 'occupier' see PARA 311 note 8.

3 Factories Act 1961 s 123(1). As to the meaning of 'factory' see PARA 318 et seq.

4 As to office premises to which the Offices, Shops and Railway Premises Act 1963 applies see PARA 328.

5 Offices, Shops and Railway Premises Act 1963 s 74(1).

6 Factories Act 1961 s 123(2).

7 Factories Act 1961 s 123(2)(e), applying Pt XII (ss 155-171): see PARAS 861-872.

8 Factories Act 1961 s 123(2)(f), (g), applying Pts XIII (ss 172-174), XIV (ss 175-185): see further PARAS 306-308, 373.

9 I.e. the provisions referred to in the text and notes 6-8. As to the Secretary of State see PARA 349 et seq.

- 10    le referred to in the text to notes 1-3.
- 11    le described in the text to notes 1-3.
- 12    Factories Act 1961 s 123(3) (amended by SI 1974/1941).
- 13    le the provisions referred to in notes 6-8.
- 14    Factories Act 1961 s 123(4) (as amended: see note 12).

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### **310. Application to institutions.**

Where, in any premises forming part of an institution carried on for charitable or reformatory purposes, any manual labour is exercised in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning or adapting for sale of articles not intended for the use of the institution, but the premises do not constitute a factory, the provisions of the Factories Act 1961 nevertheless apply to such premises<sup>1</sup>.

<sup>1</sup> Factories Act 1961 s 124(1) (amended by SI 1974/1941). As to charitable purposes see **CHARITIES** vol 8 (2010) PARA 1 et seq.

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### **311. Application to docks, wharves, quays and warehouses.**

Certain provisions of the Factories Act 1961 apply to every dock<sup>1</sup>, wharf<sup>2</sup> or quay (including any warehouse<sup>3</sup> belonging to the owners, trustees or conservators of the dock, wharf or quay and any line or siding used in connection with it and for its purposes, and not forming part of a railway<sup>4</sup> or tramway<sup>5</sup>) and every other warehouse (not forming part of a factory<sup>6</sup>) in or for the purposes of which mechanical power is used<sup>7</sup>, as if it were a factory, and as if the person having the actual use or occupation of it<sup>8</sup>, or of any premises within it or forming part of it, were the occupier of a factory<sup>9</sup>.

Where in such a dock, wharf, quay or warehouse there are comprised office premises to which the Offices, Shops and Railway Premises Act 1963 applies<sup>10</sup>, then for the purpose of the above provisions those office premises are deemed not to form part of the dock, wharf, quay or warehouse<sup>11</sup>.

Regulations made under the Health and Safety at Work etc Act 1974 also apply specifically to docks and dock operations<sup>12</sup>.

The provisions of the Factories Act 1961 which apply to docks, wharves, quays and certain warehouses are those relating to (1) premises where part of a building is a separate factory, subject to modifications which may be made by regulations<sup>13</sup>, (2) preservation of registers and records<sup>14</sup>, subject to any modifications which may be made by regulations<sup>15</sup>; (3) offences, penalties and legal proceedings<sup>16</sup>; (4) interpretation and certain general provisions of the Act<sup>17</sup>; and (5) medical examinations of persons employed in factories<sup>18</sup>.

1 'Dock' means the solid structure and body of the dock, not the water space within its limits: *Houlder Line Ltd v Griffin* [1905] AC 220 at 224, HL, per Lord Macnaghten; and see also PARA 312.

2 A structure which would be a wharf if on or in close proximity to the shore does not cease to be a wharf by the mere fact of its being removed some distance from the shore for the more convenient carrying on of the process of unloading vessels: *Ellis v Cory & Son Ltd* [1902] 1 KB 38, CA. For decisions of fact as to whether a structure was or was not a wharf see also *Haddock v Humphrey* [1900] 1 QB 609, CA (yard separated from wharf by fence with gates); and *Kenny v Harrison* [1902] 2 KB 168, CA (piece of land separated from wharf on which timber was sometimes landed).

3 'Warehouse' means a place used for the storage of goods, even temporarily, as in a dock transit shed: *Fisher v Port of London Authority* [1962] 1 All ER 458, [1962] 1 WLR 234. A storage place which is ancillary to a business which is wholly or substantially retail is not a warehouse: *Green v Britten and Gilson* [1904] 1 KB 350, CA. A room in the basement under retail salerooms used for storing goods temporarily until wanted in the salerooms was held not to be a warehouse in *Burr v William Whiteley Ltd* (1902) 19 TLR 117. These cases are not to be taken as laying down an absolute rule of law that no building can be a warehouse if it is connected with a retail business alone; it is possible even in a retail business to have a building which may be in the fullest sense of the term a warehouse: *Moreton v Reeve* [1907] 2 KB 401, CA. For decisions as to whether particular places are or are not warehouses see also *Colvine v Anderson and Gibb* (1902) 5 F 225, Ct of Sess; *M'Ewan v Perth Magistrates* (1905) 7 F 714, Ct of Sess; *Buckingham v Fulham Corp* (1905) 69 JP 297, CA; *Middleton v Wade & Son* (1905), cited in 53 WR 629, per Collins MR; *Rogers v Manchester Packing Co* [1898] 1 QB 344, DC. See also note 7.

4 As to the meaning of 'railway' see PARA 321 note 1.

5 As to the meaning of 'tramway' see PARA 321 note 2.

6 As to the meaning of 'factory' see PARA 318 et seq.



7 The reference in the Factories Act 1961 s 125(1) to a warehouse 'in or for the purposes of which mechanical power is used', being a warehouse neither forming part of a factory nor belonging to the owners, trustees or conservators of a dock, wharf or quay, must be construed as not including a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale or a part of a building so occupied where goods are so kept: Offices, Shops and Railway Premises Act 1963 s 75(3). With the exception of s 75(3) nothing in the Act applies to any premises which, not being office premises, are used for the sale of fish by wholesale and constitute, or are comprised in, premises to which certain provisions of the Factories Act 1961 apply by virtue of the Factories Act 1961 s 125(1): Offices, Shops and Railway Premises Act 1963 s 85(2).

8 The Factories Act 1961 contains no definition of 'occupier' or 'actual use or occupation', but their meaning (when used in other parts of the Act their meaning is not necessarily the same) in relation to docks, quays and ships has been discussed in the following cases: *Raine v Jobson & Co* [1901] AC 404 at 408, HL, per Earl of Halsbury LC (ship repairers who hired a berth in a dock 'were in the actual use or occupation of premises within the dock or forming part of it'); *Bartell v W Gray & Co* [1902] 1 KB 225, CA (from the decision of the House of Lords in *Raine v Jobson & Co* [1901] AC 404, HL, it is clear that persons repairing a ship in a dock are occupiers of a factory); *Bartell v W Gray & Co* [1902] 1 KB 225, CA (contractors in possession of a ship for the purpose of repairing her may be occupiers although their use or occupation may not be exclusive); *Weavings v Kirk and Randall* [1904] 1 KB 213 at 217, CA, per Mathew LJ ('since the decision in *Bartell v W Gray & Co*, I should have thought there could be no question in this court that several persons may at the same time be occupiers of premises within the meaning of the Act for different purposes'). On this point see also *Burdon v Gregson & Co* [1906] 2 KB 275, CA (following *Smith v Standard Steam Fishing Co*, *Burden v Gregson & Co* [1906] 2 KB 275, CA); *Merrill v Wilson, Sons & Co Ltd* [1901] 1 KB 35, CA, per Collins LJ (followed in *Hainsborough v Ralli Bros* (1901) 18 TLR 21, CA) ('in this case we have a ship moored alongside of a quay, and, for the whole length of the ship, the quay side is devoted to the use of the shipowners for the purpose for which quays are used, namely, for the unloading or loading of the ship and other matters ancillary thereto. If that is not 'actual use' of the quay, I do not see what can be. The Act does not insist on more than 'actual use' of the quay, for the collocation of those words disjunctively with the word 'occupation' involves that 'use' must mean something less than legal occupation'). Tenants of a small hut in a dock who supplied horses for haulage purposes in the dock were held to have actual use or occupation of the dock and, therefore, to be occupiers of a factory: *Pacific Steam Navigation Co v Pugh & Son* (1907) 23 TLR 622, CA; see also *Carrington v Bannister & Co* [1901] 1 KB 20, CA; *Jackson v Rodger & Co* (1899) 1 F 1053, Ct of Sess; on appeal (1900) 2 F 533, Ct of Sess; *Bruce v Henry & Co* (1900) 2 F 717, Ct of Sess; *Law v Abernethy & Co* (1900) 2 F 722, Ct of Sess; *Purves v Sterne & Co Ltd* (1900) 2 F 887, Ct of Sess; *Stewart v Dublin and Glasgow Steam Packet Co Ltd* (1902) 5 F 57, Ct of Sess; *Stewart v Darngavil Coal Co Ltd* (1902) 4 F 425, Ct of Sess; *Ramsay v Mackie* (1904) 7 F 106, Ct of Sess; *Fogarty v Wallis & Co* [1903] 2 IR 522, CA; *Morgan v Tydvil Engineering and Ship Repairing Co* (1908) 98 LT 762, HL, following *Houlder Line Ltd v Griffin* [1905] AC 220, HL.

9 Factories Act 1961 s 125(1).

10 As to office premises to which the Offices, Shops and Railway Premises Act 1963 applies see PARA 328.

11 Offices, Shops and Railway Premises Act 1963 s 75(1).

12 See the Docks Regulations 1988, SI 1988/1655; and PARA 706 et seq.

13 Factories Act 1961 s 125(2)(g), applying those provisions of Pt VII (ss 120-132) which apply to premises where part of a building is a separate factory (ie s 122: see PARA 866).

14 As to the preservation of registers and records see PARA 390.

15 Factories Act 1961 s 125(2)(j) (amended by the Weights and Measures Act 1963 s 63(1), Sch 9 Pt I; and by SI 1975/1012; SI 1989/682; SI 1995/2923; and SI 2009/605).

16 Factories Act 1961 s 125(2)(l), applying Pt XII (ss 155-171): see PARA 861 et seq.

17 Factories Act 1961 s 125(2)(m), applying Pt XIV (ss 175-185).

18 See the Employment Medical Advisory Service Act 1972 s 8(1) (amended in relation to the Factories Act 1961 s 119A (repealed) by the Employment Act 1989 s 29(4), Sch 7 Pt III), applying the Factories Act 1961 s 10A; and PARA 848.

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### **312. Provisions applied to loading, etc of ships in dock.**

Certain provisions of the Factories Act 1961<sup>1</sup> apply to the process of loading<sup>2</sup>, unloading or coaling of any ship<sup>3</sup> in any dock<sup>4</sup>, harbour<sup>5</sup> or canal, and to all machinery or plant (including any gangway or ladder used by any person employed to load or unload or coal a ship<sup>6</sup>) used in those processes as if the processes were carried on in a factory and the machinery or plant were machinery or plant in a factory, and the person who carries on those processes were the occupier of a factory<sup>7</sup>. These provisions do not apply to machinery or plant which is on board ship and is the property of the shipowner or charterer, or is rented, leased or hired by him or his agent, or is being purchased by him or his agent under a hire-purchase agreement or a conditional sale agreement<sup>8</sup>.

The provisions which apply are those which relate to (1) the preservation of registers and records, subject to any modifications which may be made by regulations<sup>9</sup>; (2) offences, penalties and legal proceedings<sup>10</sup>; and (3) interpretation and certain general provisions of the Act<sup>11</sup>.

1 See the text and notes 9-11; and see also the Docks Regulations 1988, SI 1988/1655, which apply to dock operations, including the loading and unloading of ships; and PARA 706 et seq.

2 'Finishing off' a hold on board a ship by putting iron cross-beams across the hatchway after the actual putting of the goods into the hold has been completed is part of the process of 'loading': *Lysons v Andrew Knowles & Sons Ltd, Stuart v Nixon and Bruce* [1901] AC 79, HL; see also *Durrie v Warren & Co* (1899) 15 TLR 365, CA; *Medd v MacIver* (1899) 15 TLR 364, CA; *Reid v Anchor Line* (1903) 5 F 435, Ct of Sess.

3 For these purposes, 'ship' and 'vessel' have the same meaning as 'ship' in the Merchant Shipping Act 1995 (ie 'ship' includes every description of vessel used in navigation: see s 313(1)): Factories Act 1961 s 176(1) (definition substituted by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 31).

4 'Ship in any dock' includes a ship in dry dock: *Raine v Jobson & Co* [1901] AC 404, HL. The Act refers to a dock in general terms, without reference to whether it is wet or dry: *Cattermole v Atlantic Transport Co* [1902] 1 KB 204, CA; see also *Houlder Line Ltd v Griffin* [1905] AC 220, HL; *Smith v Standard Steam Fishing Co, Burdon v Gregson & Co* [1906] 2 KB 275, CA; and *Hanlon v North City Milling Co* [1903] 2 IR 163, CA. As to docks see **PORTS AND HARBOURS; SHIPPING AND MARITIME LAW**.

5 'Harbour' includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers: see the Factories Act 1961 s 176(1) (amended for these purposes by the Merchant Shipping Act 1995 s 314(2), Sch 13, para 31), applying the Merchant Shipping Act 1995 s 313(1). See also **PORTS AND HARBOURS; SHIPPING AND MARITIME LAW**.

6 Factories Act 1961 s 125(5).

7 Factories Act 1961 s 125(3)(a).

8 Ie each within the meaning of the Health and Safety at Work etc Act 1974 s 53: Factories Act 1961 s 125(4) (substituted by SI 1988/1655).

9 The provisions of the Factories Act 1961 s 125(2)(j) (see PARA 311 head (2)) are applied by s 125(3)(a).

10 The provisions of the Factories Act 1961 s 125(2)(l) (see PARA 311 head (3)) are applied by s 125(3)(a).

11 The provisions of the Factories Act 1961 s 125(2)(m) (see PARA 311 head (4)) are applied by s 125(3)(a).

Additionally, the Employment Medical Advisory Service Act 1972 s 8(1) (amended in relation to the Factories Act 1961 s 119A (repealed) by the Employment Act 1989 s 29(4), Sch 7 Pt III), applies the Factories Act 1961 s

10A (medical examination of persons employed in factories: see PARA 848) for these purposes, but states that the Factories Act 1961 s 10A does not apply to a member of the crew of a ship.

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### **313. Application to dock premises and warehouses.**

The provisions of Part II of the Factories Act 1961 and any regulations made under that Part<sup>1</sup>, with respect to prime movers<sup>2</sup>, transmission machinery<sup>3</sup>, other machinery, provisions as to unfenced machinery, construction and maintenance of fencing, hoists and lifts apply to all dock premises as if such premises were a factory, and the person having the control of such matter were the occupier of the factory in respect of that matter<sup>4</sup>. For these purposes, 'dock premises' means any dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities<sup>5</sup>.

The provisions of Part II of the Factories Act 1961<sup>6</sup>, with respect to prime movers, transmission machinery, dangerous parts of other machinery, provisions as to unfenced machinery, construction and maintenance of fencing, construction and sale of new machinery, cleaning of machinery by young persons, training and supervision of young persons working at dangerous machines, hoists and lifts, chains, ropes and lifting tackle, cranes and other lifting machines, and the construction and maintenance of floors, passages and stairs apply to every relevant warehouse<sup>7</sup> as if it were a factory and the person having the actual use or occupation of it were the occupier of a factory<sup>8</sup>.

1    Ie, so far as unrepealed, the provisions of the Factories Act 1961 Pt II (ss 12-56): s 125(7) (s 125(7), (9) added by SI 1988/1655). However, the majority of those provisions are now repealed and regulations made under them revoked and replaced by regulations made under the Health and Safety at Work etc Act 1974. As to regulations under the 1974 Act see PARA 424. The only extant provisions of the Factories Act 1961 Pt II are s 39 (safety of water-sealed gasholders: see PARA 513) and s 56 (application to Scotland).

2    'Prime mover' means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source: Factories Act 1961 s 176(1).

3    'Transmission machinery' means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance; 'machinery' includes any driving-belt; and 'driving-belt' includes any driving strap or rope: Factories Act 1961 s 176(1). As to lifting equipment generally see now PARA 514 et seq.

4    Factories Act 1961 s 125(7) (as added: see note 1).

5    Factories Act 1961 s 125(9) (as added: see note 1).

6    Ie so far as unrepealed: see note 1.

7    Ie every warehouse mentioned in the Factories Act 1961 s 125(1) (see PARA 311 text and notes 3-7): s 125(6). There were exclusions relating to warehouses which are dock premises with regard to those general safety provisions formerly applying to chains, ropes, lifting tackle, cranes and other lifting machines, or relating to the construction and maintenance of floors, passages and stairs (now repealed and replaced by health and safety regulations under the Health and Safety at Work etc Act 1974): see the Factories Act 1961 s 125(6) (amended by SI 1988/1655). As to safety in certain of these respects see instead the Docks Regulations 1988, SI 1988/1655; and PARA 706.

8    Factories Act 1961 s 125(6) (amended by SI 1974/1941).

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### **314. Application to ships.**

Certain provisions of the Factories Act 1961 apply to any work carried out in a harbour<sup>1</sup> or wet dock in constructing, reconstructing, repairing, refitting, painting, finishing or breaking up a ship<sup>2</sup>, or in scaling, scurfing or cleaning boilers (including combustion chambers and smoke boxes) in a ship, or in cleaning oil-fuel tanks or bilges in a ship or any tank in a ship last used for oil of any description carried as cargo or any tank or hold last used for any substance so carried of a description specified in regulations made by the Secretary of State as being of a dangerous or injurious nature; and for the purposes of those provisions the ship is deemed to be a factory and any person undertaking such work is deemed to be the occupier of a factory<sup>3</sup>.

The provisions which so apply are those relating to (1) preservation of registers and records<sup>4</sup>; (2) offences, penalties and legal proceedings<sup>5</sup>; (3) interpretation and certain general provisions of the Act<sup>6</sup>; and (4) medical examinations of persons employed in factories<sup>7</sup>.

None of the above provisions applies to work of the kind already mentioned<sup>8</sup> which is done by the master or crew of a ship or done on board ship during a trial run<sup>9</sup>.

1 As to the meaning of 'harbour' see PARA 312 note 5.

2 As to the meaning of 'ship' see PARA 312 note 3.

3 Factories Act 1961 s 126(1). As to regulations made by the Secretary of State see PARA 349. Section 126(2) (a) applies ss 50, 51 (power to make regulations) both of which are now repealed.

4 Factories Act 1961 s 126(2)(j) (amended by SI 1975/1012 and SI 2009/605), applying the Factories Act 1961 Pt X (s 141). As to the preservation of registers and records see PARA 390.

5 Factories Act 1961 s 126(2)(l), applying Pt XII (ss 155-171): see PARA 862 et seq.

6 Factories Act 1961 s 126(2)(m), applying Pt XIV (ss 175-185).

7 See the Employment Medical Advisory Service Act 1972 s 8(1) (amended, so far as relating to the Factories Act 1961 s 119A, by the Employment Act 1989 s 29(4), Sch 7 Pt III), applying the Factories Act 1961 s 10A; and PARA 848.

8 See the text to notes 1-3.

9 Factories Act 1961 s 126(3).

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### **315. Application to building operations and works of engineering construction.**

Certain provisions of the Factories Act 1961 apply to building operations and works of engineering construction<sup>1</sup> undertaken by way of trade<sup>2</sup> or business, or for the purpose of any industrial or commercial undertaking, and to any line or siding which is used in such connection and for such purposes and is not part of a railway or tramway<sup>3</sup>. The provisions which apply are those which relate to (1) the preservation of registers and records<sup>4</sup>; (2) duties of district councils<sup>5</sup>; (3) offences, penalties and legal proceedings<sup>6</sup>; (4) application of the Act<sup>7</sup>; (5) interpretation and certain general provisions of the Act<sup>8</sup>; and (6) medical examinations of persons employed in factories<sup>9</sup>.

These provisions apply as if any place where building operations and works of engineering construction are carried on were a factory<sup>10</sup> and any person undertaking those operations or works were the occupier<sup>11</sup> of a factory, and with such other adaptations and modifications as may be made by regulations<sup>12</sup>; but with regard to the provisions as to keeping the register there is sufficient compliance if the register is kept at an office of the person undertaking the building operations<sup>13</sup>.

The application of the above provisions to building operations and works of engineering construction is not excluded by reason of the fact that they are undertaken on premises to which the Factories Act 1961 already applies, nor does it prejudice the general application of the Act to those premises<sup>14</sup>.

1 'Building operation' and 'work of engineering construction' mean 'construction work' within the meaning assigned to that phrase by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674); Factories Act 1961 s 176(1) (definition substituted by SI 1996/1592; and amended by virtue of SI 2007/320).

2 As to the meaning of 'by way of trade' see PARA 318 note 14.

3 Factories Act 1961 s 127(1). As to the meanings of 'railway' and 'tramway' see PARA 321 notes 1-2.

4 Factories Act 1961 s 127(2)(j) (amended by SI 1975/1012; SI 1989/682; SI 1995/2923; and SI 2009/605), applying the provisions of the Factories Act 1961 Pt X (s 141); see PARA 390.

5 Factories Act 1961 s 127(2)(k) (amended by SI 1974/1941), applying the provisions of the Factories Act 1961 Pt XI (ss 145-154) with respect to district councils (ie s 153); see further PARA 373.

6 Factories Act 1961 s 127(2)(l), applying Pt XII (ss 155-171); see PARA 862 et seq.

7 Factories Act 1961 s 127(2)(m), applying Pt XIII (ss 172-174); see PARAS 307-308, 317.

8 Factories Act 1961 s 127(2)(n), applying Pt XIV (ss 175-185). As to the interpretation of the Act see PARA 318 et seq.

9 See the Employment Medical Advisory Service Act 1972 s 8(1) (amended so far as relating to the Factories Act 1961 s 119A (repealed) by the Employment Act 1989 s 29(4), Sch 7 Pt III), applying the Factories Act 1961 s 10A; and PARA 848.

10 As to the meaning of 'factory' see PARA 318 et seq.

11 As to who is the occupier of a factory see PARA 862 text to notes 5-6.

12 Factories Act 1961 s 127(4).

13 Factories Act 1961 s 127(5) (amended by SI 1989/682; SI 1995/2923; and SI 2009/605).

14 See the Factories Act 1961 s 127(8). See also *Whitby v Burt, Boulton and Hayward Ltd* [1947] KB 918, [1947] 2 All ER 324; and *Whincup v Joseph Woodhead & Sons (Engineers) Ltd* [1951] 1 All ER 387.

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### **316. Young persons employed in certain occupations.**

A young person<sup>1</sup> who works in a factory<sup>2</sup>, whether for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands is deemed to be employed in the factory for the purposes of the Factories Act 1961 or of any proceedings under it; but the provisions with regard to employment of young persons<sup>3</sup> do not apply, except as expressly provided, to any such young person who is employed mainly outside the factory<sup>4</sup>.

1 'Young person' means a person who has ceased to be a child but has not attained the age of 18; and 'child' means any person who is not over compulsory school age (construed in accordance with the Education Act 1996 s 8); Factories Act 1961 s 176(1) (definition of 'child' substituted by the Education Act 1996 s 582(1), Sch 37 para 135).

2 As to the meaning of 'factory' see PARA 318 et seq.

3 Originally the provisions of the Factories Act 1961 Pt VI (ss 86-119); now only s 119: see PARA 847.

4 Factories Act 1961 s 176(5) (amended by the Employment Act 1989 s 29(3), Sch 6 para 6).



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### **317. Mines and quarries.**

None of the provisions of the Factories Act 1961 applies to any premises forming part of a mine<sup>1</sup>; but this does not apply where the mine is, for the time being, used for a purpose other than for, or in connection with, the getting of minerals or ensuring the safety of another mine and the Health and Safety Executive has issued an exemption certificate<sup>2</sup> in respect of it<sup>3</sup>. Further, those provisions of the 1961 Act which are applied<sup>4</sup> to building operations<sup>5</sup> apply, as respects premises forming part of a mine, to building operations undertaken above ground<sup>6</sup>.

None of the provisions of the Factories Act 1961 applies to any premises forming part of a quarry<sup>7</sup>.

1 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 40(1). As to the meaning of 'mine' see PARAS 343 note 1, 748 note 1.

2 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 38(2) exempting the mine from the relevant statutory provisions which expressly apply to all mines, to any class of mine to which the mine belongs, or to the mine: see PARA 748. As to the Health and Safety Executive see PARA 361 et seq.

3 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 40(2).

4 Ie applied by the Factories Act 1961 s 127: see PARA 315.

5 For these purposes, 'building operation' has the same meaning as in the Factories Act 1961 s 176(1) (see PARA 315 note 1): Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 40(3) (substituted by SI 1996/1592).

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 40(3) (as substituted: see note 5).

7 Factories Act 1961 s 174(1) (substituted by SI 1999/2024). As to quarries see PARA 838 et seq.

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## (B) PARTICULAR TERMS

### 318. General meaning of 'factory'.

'Factory' means any premises<sup>1</sup> in which, or within the close or curtilage or precincts of which<sup>2</sup>, persons<sup>3</sup> are employed<sup>4</sup> in manual labour<sup>5</sup> in any process<sup>6</sup> for or incidental to any of the following purposes:

- 21 (1) making any article or part of an article<sup>7</sup>;
- 22 (2) altering, repairing, ornamenting, finishing, cleaning<sup>8</sup>, washing, breaking up or demolishing any article<sup>9</sup>;
- 23 (3) adapting any article for sale<sup>10</sup>;
- 24 (4) slaughtering cattle, sheep, swine, goats, horses, asses or mules<sup>11</sup>; or
- 25 (5) confining such animals while awaiting slaughter at other premises, where the place of confinement is available in connection with those other premises, is not maintained primarily for agricultural purposes<sup>12</sup> and does not form part of premises used for the holding of a market in respect of such animals<sup>13</sup>.

In all cases the premises must be those in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain<sup>14</sup> and to or over which the employer of the persons employed there has the right of access or control<sup>15</sup>.

1 An incomplete building may become a factory if persons are employed there in manual labour in a process within the statutory definition of 'factory': *Barrington v Kent Rivers Catchment Board* [1947] 2 All ER 782.

2 As to what is in the area of a factory see PARA 320.

3 Premises may constitute a factory within this definition even though only one person is employed: *Griffith v Ferrier* 1952 JC 56; and see PARA 327 note 5.

4 There must be the relationship of employer and employee or employment for wages: see *Pullen v Prison Comrs* [1957] 3 All ER 470, [1957] 1 WLR 1186 (prison workshop not a factory); *Weston v LCC* [1941] 1 KB 608, [1941] 1 All ER 555 (technical institute not a factory). For the purposes of the Factories Act 1961 an apprentice is deemed to be a person employed: Factories Act 1961 s 176(7).

5 The meaning of 'manual labour' has been discussed in many reported cases, which are reviewed in *J and F Stone Lighting and Radio v Haygarth* [1968] AC 157, [1966] 3 All ER 539, HL, from which it appears that although manual labour denotes working with the hands, the work need not be heavy or unskilled work. Thus, if someone is employed to work with his hands, so that in a realistic way it can be said that such work forms his main or predominant activity (as opposed to work with his hands which is merely incidental or accessory to work which is not so done) then he is employed in manual labour. It follows that if the manual work which a person does is merely ancillary or accessory to his primary activity he is not employed in manual labour: see *Morgan v London General Omnibus Co* (1884) 13 QBD 832, CA (bus conductor not engaged in manual labour); *Cook v North Metropolitan Tramways Co* (1887) 18 QBD 683 (tram driver not engaged in manual labour); *Bound v Lawrence* [1892] 1 QB 226, CA (grocer's assistant not engaged in manual labour); *Fullers Ltd v Squire* [1901] 2 KB 209 (packing of sweetmeats in boxes long after shop hours not mere incident of business of shop, but adapting of articles for sale: see the text and note 10); *Hoare v Robert Green Ltd* [1907] 2 KB 315, DC (making of wreaths manual labour); *Re National Insurance Act 1911, Re Lithographic Artists, Re Engravers* (1913) 108 LT 894 (lithographers and engravers exercising high degree of artistic skill not employed in manual labour); *Re Gardner, Re Maschek, Re Tyrrell* [1938] 1 All ER 20 (modellers employed in manual labour); *Joyce v Boots Cash Chemists (Southern) Ltd* [1950] 2 All ER 719; on appeal [1951] 1 All ER 682n, CA (dispenser not employed in

manual labour); *J and F Stone Lighting and Radio v Haygarth* [1968] AC 157, [1966] 3 All ER 539, HL (engineer diagnosing faults in radio and television sets employed in manual labour).

6 'Process' includes the use of any locomotive: Factories Act 1961 s 176(1). 'Process' includes any operation or series of operations involving some degree of continuity and repetition of a series of acts and being an activity of more than minimal duration: thus, eg the demolition over some days of brick driers within a factory is a process within the meaning of the Act: *Nurse v Morganite Crucible Ltd* [1989] AC 692, [1989] 1 All ER 113, HL. As to the exclusion of premises forming part of a mine or quarry see PARA 317.

7 Factories Act 1961 s 175(1)(a). 'Article' means any inanimate corporeal thing, but it need not be a thing which has been made: *Longhurst v Guildford, Godalming and District Water Board* [1963] AC 265, [1961] 3 All ER 545, HL (water in a filter house an article). Gas is an article (*Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 All ER 665, CA) but electrical energy is not (*Granada TV Network Ltd v Kerridge* [1961] RVR 687, Lands Tribunal). A live animal is not an article (*Fatstock Marketing Corpn Ltd v Morgan (Valuation Officer)* [1958] 1 All ER 646, [1958] 1 WLR 357, CA) but a photographic print produced in a darkroom is (*Paul Popper Ltd v Grimsey* [1963] 1 QB 44, [1962] 1 All ER 864, DC), as is a film (*Dunsby v BBC* (1983) Times, 25 July). Although electrical energy is not an article for this purpose, the Factories Act 1961 is in part applied to electrical stations by s 123: see PARA 309.

8 Premises where only cleaning of vehicles is carried out are not a factory: see the Factories Act 1961 s 175(10); and PARA 319 text and note 10.

9 Factories Act 1961 s 175(1)(b).

10 Factories Act 1961 s 175(1)(c). An adaptation for sale points to something being done to the article in question which, in some way, makes it in itself different from what it was before: *Grove (Dudley Revenue Officer) v Lloyd's British Testing Co Ltd* [1931] AC 446, HL. Thus, the maturing, carbonation, filtering and bottling of beer is an adaptation for sale (*Hoare v Truman, Hanbury Buxton & Co* (1902) 71 LJB 380; *Sedgwick v Watney Coombe Reid & Co Ltd* [1931] AC 446, HL) but the mere bottling of beer is not (*Keith Ltd v Kirkwood* 1914 SC (J) 150). Premises used for bottling may, however, become factory premises by virtue of the Factories Act 1961 s 175(2)(c): see PARA 319 text to note 6. The cleaning and cooling of milk in order that it may withstand a journey is not an adaptation for sale (*Wiltshire County Valuation Committee v London Co-operative Society Ltd* [1950] 1 All ER 937, DC) but the maturation of whisky into Scotch whisky is an adaptation for sale (*Lanarkshire Assessor v Arbuckle, Smith & Co Ltd* 1968 SLT 20; *Arthur Bell & Sons Ltd v Assessor for Fife* 1968 SLT 185).

The mere testing of an article is not an adaptation for sale: *Grove (Dudley Revenue Officer) v Lloyd's British Testing Co Ltd* [1931] AC 446, HL; cf *Acton Borough Council v West Middlesex Assessment Committee* [1949] 2 KB 10, [1949] 1 All ER 409, DC. However, if the process of testing involves the manufacture or destruction of an article, then the premises in which the process takes place will be a factory by reason of the operation of the Factories Act 1961 s 175(1)(a) or (b) (see the text to notes 7, 9): *Stanger v Hendon Borough Council* [1948] 1 KB 571, sub nom *Hendon Corpn v Stanger* [1948] 1 All ER 377, CA (making and destruction of concrete briquettes for research purposes).

Storage of goods is not of itself an adaptation for sale. Whether storage accompanied by a process of refrigeration constitutes an adaptation for sale must depend upon the effect which the process of refrigeration has upon the goods: *Union Cold Storage Co Ltd v Bancroft* [1931] AC 446, HL; cf *Cockram v Tropical Preservation Co Ltd* [1951] 2 KB 827, [1951] 2 All ER 520, CA. The ripening of bananas by artificial heat is an adaptation for sale: *Lanarkshire Assessor v Geest Industries Ltd* 1962 SLT 189.

Arranging sweetmeats in boxes and tying them with ribbons is an adaptation for sale (*Fullers Ltd v Squire* [1901] 2 KB 209), as is the making of natural flowers into wreaths in a florist's shop (*Hoare v Robert Green Ltd* [1907] 2 KB 315). The compressing of waste paper into bales (*Kinder v Camberwell Borough Council* [1944] 2 All ER 315) and the cutting of timber (*Smith v Supreme Wood Pulp Co Ltd* [1968] 3 All ER 753) are also adaptations for sale. The back room of a retail grocer's shop is a factory if it is used for the reception and unpacking of goods in bulk and their treatment for retail sale: *Cardiff Revenue Officer v Cardiff Assessment Committee and Western Mail Ltd* [1931] 1 KB 47, DC. The sorting of articles may amount to an adaptation for sale, even though the individual articles undergo no change in the process (*Kaye v Burrows* [1931] AC 446, HL (sorting of rags from amorphous mass); *Hines v Eastern Counties Farmers' Co-operative Association Ltd* [1931] AC 446, HL (sorting of seeds to make them commercially saleable); *Hudson's Bay Co v Thompson (Valuation Officer)* [1960] AC 926, [1959] 3 All ER 150, HL (sorting of furs); *Henderson v Glasgow Corpn* (1900) 2 F 1127, Ct of Sess (sorting of town refuse)); cf *Davis Cohen & Sons Ltd v Hall* [1952] 1 All ER 157, CA (storage and arranging of government surplus stores in warehouse not an adaptation for sale).

11 Factories Act 1961 s 175(1)(d). See also note 13.

12 Ie agricultural purposes within the meaning of the Agriculture Act 1947 (see s 109(3); and **AGRICULTURAL LAND** vol 1 (2008) PARA 324); Factories Act 1961 s 175(1)(e).

13 Factories Act 1961 s 175(1)(e).

14 'By way of trade or for purposes of gain' means for purposes of sale or for direct or indirect gain: *Stanger v Hendon Borough Council* [1948] 1 KB 571, sub nom *Hendon Corp v Stanger* [1948] 1 All ER 377, CA, explaining the ratio decidendi in *Nash v Hollinshead* [1901] 1 KB 700, CA (where it was held that grinding meal on a farm for the purpose of feeding the farm stock, and not for purposes of sale, is not within the expression, as the Factories Act does not extend to farming), and disapproving *Curtis v Shinner* (1906) 95 LT 31. If there is a trade, there is no need to consider gain; the fact that products are only used to enable a trade to be carried on is sufficient: *Bailey (Stoke-on-Trent Revenue Officer) v Potteries Electric Traction Co Ltd* [1931] 1 KB 385, CA.

Under the Rating and Valuation (Apportionment) Act 1928 (repealed) it was held that trade is not limited to the sale of goods, but extends to the supply of services for reward: *Bailey (Stoke-on-Trent Revenue Officer) v Potteries Electric Traction Co Ltd* [1931] 1 KB 385, CA; on appeal sub nom *Potteries Electric Traction Co Ltd v Bailey (Stoke-on-Trent Revenue Officer)* [1931] AC 151, HL. See also *Barton (Stepney Revenue Officer) v R Twining & Co Ltd* [1931] 1 KB 385, CA (coffee grinding for sale in own shops); *Moon (Lambeth Revenue Officer) v LCC* [1931] 1 KB 385, CA; affd [1931] AC 151, HL (printing of tickets for use on LCC trams); *Barton (Poplar Revenue Officer) v Union Lighterage Co Ltd* [1931] 1 KB 385, CA (repairing of its own barges by a lighterage company).

15 Factories Act 1961 s 175(1). The definition must be construed in the light of common sense; thus the kitchen of a large mental hospital is not within it since many of the provisions of the Act could not apply to it: *Wood v LCC* [1941] 2 KB 232, [1941] 2 All ER 230, CA; see also *Nash v Hollinshead* [1901] 1 KB 700, CA, as explained in *Stanger v Hendon Borough Council* [1948] 1 KB 571, sub nom *Hendon Corp v Stanger* [1948] 1 All ER 377, CA (the Factories Act 1961 does not cover farming); and *Weston v LCC* [1941] 1 KB 608, [1941] 1 All ER 555 (technical institute not a factory); but see *Bromwich v National Ear, Nose and Throat Hospital* [1980] 2 All ER 663, [1980] ICR 450 (hospital workshop used for repair of hospital equipment a factory).

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### **319. Special classes of premises.**

The meaning of 'factory' includes the following premises in which persons are employed in manual labour<sup>1</sup>, whether or not they are factories by reason of the general statutory definition<sup>2</sup>:

- 26 (1) any yard or dry dock (including its precincts) in which ships or vessels<sup>3</sup> are constructed, reconstructed, repaired, refitted, finished or broken up<sup>4</sup>;
- 27 (2) any premises in which the business of sorting any articles is carried on as a preliminary to the work carried on in any factory or incidentally to the purposes of any factory<sup>5</sup>;
- 28 (3) any premises in which the business of washing or filling bottles or containers or packing articles is carried on incidentally to the purposes of any factory<sup>6</sup>;
- 29 (4) any premises in which the business of hooking, plaiting, lapping, making up or packing yarn or cloth is carried on<sup>7</sup>;
- 30 (5) any laundry carried on as ancillary to another business<sup>8</sup>, or incidentally to the purposes of any public institution<sup>9</sup>;
- 31 (6) any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being any premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out, unless they are premises used for the purposes of a railway undertaking where running repairs to locomotives are carried out<sup>10</sup>;
- 32 (7) any premises in which printing by letterpress, lithography, photogravure or other similar process or bookbinding is carried on by way of trade or for purposes of gain<sup>11</sup>, or incidentally to another business so carried on<sup>12</sup>;
- 33 (8) any premises in which the making, adaptation or repair of dresses, scenery or properties is carried on incidentally to the production, exhibition or presentation by way of trade or for purposes of gain of cinematograph films or theatrical performances, not being a stage or dressing-room of a theatre in which only occasional adaptations or repairs are made<sup>13</sup>;
- 34 (9) any premises in which the business of making or mending nets is carried on incidentally to the fishing industry<sup>14</sup>;
- 35 (10) any premises in which mechanical power<sup>15</sup> is used in connection with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain<sup>16</sup>;
- 36 (11) any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain, but the employment at any such premises of theatrical performers<sup>17</sup> and of attendants on them is not deemed to be employment in a factory<sup>18</sup>;
- 37 (12) any premises in which articles are made or prepared incidentally to the carrying on of building operations<sup>19</sup> or works of engineering construction<sup>20</sup>, not being premises in which such operations or works are being carried on<sup>21</sup>; and
- 38 (13) any premises used for the storage of gas in a gasholder<sup>22</sup> having a storage capacity of not less than 140 cubic metres<sup>23</sup>.

- 1 As to the meaning of 'manual labour' see PARA 318 note 5.
- 2 For the general statutory definition of 'factory' see PARA 318.
- 3 As to the meaning of 'ship' see PARA 312 note 3.
- 4 Factories Act 1961 s 175(2)(a). A ship in wet dock is not a factory (*Lovell v Blundells and Crompton & Co Ltd* [1944] KB 502, [1944] 2 All ER 53; *Bowman v Ellerman Lines Ltd* 1953 SLT 271); nor is a dock where repairs are only occasionally done (*Spencer v Livett, Frank & Son* [1900] 1 QB 498, CA).
- 5 Factories Act 1961 s 175(2)(b). As to the meaning of 'article' see PARA 318 note 7. As to whether sorting constitutes an adaptation for sale within s 175(1)(c) see PARA 318 note 10.
- 6 Factories Act 1961 s 175(2)(c).
- 7 Factories Act 1961 s 175(2)(d).
- 8 See *Sadler v Roberts* (1911) 105 LT 106, DC (hotel linen only washed); *Royal Masonic Institution for Boys (Trustees) v Parkes* [1912] 3 KB 212, DC (inmates' washing).
- 9 Factories Act 1961 s 175(2)(e). The following have been held to be public institutions: an orphanage for the children of deceased railway employees (*Hall v Derby Sanitary Authority* (1885) 16 QBD 163); an asylum for orphan children, maintained by public subscriptions, receiving no government grant, and not under any public control (*Seal v British Orphan Asylum Trustees* (1911) 104 LT 424, DC); an institution for the children of freemasons, supported almost entirely by subscriptions of freemasons (*Royal Masonic Institution for Boys (Trustees) v Parkes* [1912] 3 KB 212, DC).
- 10 Factories Act 1961 s 175(2)(f), (10). 'Running repairs' means repairs of defects which arise in the course of ordinary running; minor adjustments are those which have to be carried out from time to time when nuts work loose, electrical equipment requires slight correction and so forth: *Griffin v London Transport Executive* [1950] 1 All ER 716. As to the meaning of 'cleaning' see *Jones v Crosville Motor Services Ltd* [1956] 3 All ER 417, [1956] 1 WLR 1425.
- 11 As to the meaning of 'by way of trade or for purposes of gain' see PARA 318 note 14.
- 12 Factories Act 1961 s 175(2)(g).
- 13 Factories Act 1961 s 175(2)(h).
- 14 Factories Act 1961 s 175(2)(j).
- 15 As to mechanical power see PARA 325 note 1.
- 16 Factories Act 1961 s 175(2)(k).
- 17 Is within the meaning of the Theatrical Employers Registration Act 1925 (repealed): Factories Act 1961 s 175(2)(l).
- 18 Factories Act 1961 s 175(2)(l).
- 19 As to the meaning of 'building operation' see PARA 315 note 1.
- 20 As to the meaning of 'work of engineering construction' see PARA 315 note 1.
- 21 Factories Act 1961 s 175(2)(m).
- 22 A gasholder which once held but no longer holds and cannot hold gas is not included: see *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 All ER 665, CA.
- 23 Factories Act 1961 s 175(2)(n) (amended by SI 1983/978).

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### 320. Area of the factory.

A factory must occupy a fixed site<sup>1</sup>, but premises are not excluded from the definition of 'factory' by reason only that they are open air premises<sup>2</sup>. Subject to the exceptions mentioned here, the area of the factory is the whole space contained within its boundaries<sup>3</sup>. More than one factory may be contained in a single building or group of buildings, and different parts of the same building may constitute separate factories<sup>4</sup>. A part of a factory may, with the written approval of an authorised inspector, be taken to be a separate factory and two or more factories may, with the same approval, be taken to be a single factory<sup>5</sup>. Where the Secretary of State<sup>6</sup> by regulations so directs as respects all or any of the purposes of the Factories Act 1961, different branches or departments of work carried on in the same factory are deemed to be different factories<sup>7</sup>.

Where a place situated within the close, curtilage or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place is not to be deemed to form part of the factory for the purposes of the Factories Act 1961 but, if otherwise it would be a factory, it is to be deemed to be a separate factory<sup>8</sup>.

Separate buildings, even though a considerable distance apart, may, if used for one continuous manufacturing process, constitute a single factory<sup>9</sup>. The place, however, where the product of a factory is delivered, even if directly connected with the place of production, is not necessarily part of the factory<sup>10</sup>.

1 *George v Macdonald* (1901) 4 F 190, Ct of Sess, where a traction engine hauling a threshing machine was held not to be a factory while in transit. 'Premises' does not mean any place which may be momentarily covered in the course of a journey by a traction engine hauling a machine: *George v Macdonald* (1901) 4 F 190, Ct of Sess.

2 Factories Act 1961 s 175(7). As to the meaning of 'factory' see PARAS 318-319.

3 *Back v Dick Kerr & Co Ltd* [1906] AC 325, HL. There need be no boundary wall or fence: *Barry v Cleveland Bridge and Engineering Co Ltd* [1963] 1 All ER 192 (areas of quay with clearly recognisable boundaries); *Walsh v Allweather Mechanical Grouting Co Ltd* [1959] 2 QB 300, [1959] 2 All ER 588, CA (apron outside aircraft hangar). The existence of a manufacturing activity in part of the premises will make the whole premises a factory, subject to the Factories Act 1961 s 175(6) (see the text and note 8): *Hosking v De Havilland Aircraft Co Ltd* [1949] 1 All ER 540; *Newton v John Stanning & Son Ltd* [1962] 1 All ER 78, [1962] 1 WLR 30, DC; *Paul Popper Ltd v Grimsey* [1963] 1 QB 44, [1962] 1 All ER 864, DC.

4 *Brass v LCC* [1904] 2 KB 336. As to provisions relating to tenement factories and parts of buildings let off as separate factories see PARAS 865-866.

5 Factories Act 1961 s 175(4). As to authorised inspectors see PARA 375 note 2.

6 As to the Secretary of State see PARA 355.

7 Factories Act 1961 s 175(8).

8 Factories Act 1961 s 175(6). 'A place' means a defined and ascertainable place, whether or not it is marked off from the rest of the factory by a physical boundary: *Lewis v Gilbertson & Co Ltd* (1904) 68 JP 323; *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 All ER 665, CA; *Richmond Rating Authority and Surrey County Valuation Office v Ham River Grit Co* [1949] 1 KB 426, sub nom *Ham River Grit Co Ltd v Richmond Rating Authority* [1949] 1 All ER 286, DC; *Walsh v Allweather Mechanical Grouting Co Ltd* [1959] 2 QB 300, [1959] 2 All ER 588, CA.

The following propositions may be deduced from the authorities: (1) the Factories Act 1961 s 175(6) must be interpreted as if it read 'solely used for some purpose other than the processes for and incidental to the main purpose of the factory'; (2) the words 'solely used for some purpose' must be read as 'solely used for some process'; (3) the process carried on in 'the place' need not be the same as the process carried on in the factory; it is enough if such a process is one incidental to what is done in the factory (*Powley v British Siddeley Engines Ltd* [1965] 3 All ER 612 at 617, [1966] 1 WLR 729 at 735-736 per Megaw J, following *Thurogood v Van Den Berghs and Jurgens Ltd* [1951] 2 KB 537, [1951] 1 All ER 682, CA); (4) the fact that the persons principally employed in 'the place' are not engaged in manual labour is not relevant; and (5) 'a process' does not necessarily connote a manufacturing process (*London Co-operative Society Ltd v Southern Essex Assessment Committee* [1942] 1 KB 53, [1941] 3 All ER 252, DC; applied in *Powley v British Siddeley Engines Ltd* [1965] 3 All ER 612, [1966] 1 WLR 729). 'A process' includes any operation or series of operations involving some degree of continuity and repetition of a series of acts and being an activity of more than minimal duration; thus, eg the demolition over some days of brick driers within a factory is a process: *Nurse v Morganite Crucible Ltd* [1989] AC 692, [1989] 1 All ER 113, HL. And see also *Joyce v Boots Cash Chemists (Southern) Ltd* [1950] 2 All ER 719; affd on other grounds [1951] 1 All ER 682n, CA.

Illustrations of the application of the Factories Act 1961 s 175(6) are *Lewis v Gilbertson & Co Ltd* (1904) 68 JP 323 (site of crushing machine used for crushing materials for new building neither part of a factory nor a separate factory); *Wood v LCC* [1941] 2 KB 232, [1941] 2 All ER 230, CA (kitchen of mental hospital not a factory); *Thomas v British Thomson-Houston Co Ltd* [1953] 1 All ER 29, [1953] 1 WLR 67 (executives' restaurant not part of factory); *London Co-operative Society Ltd v Southern Essex Assessment Committee* [1942] 1 KB 53, [1941] 3 All ER 252, DC (laundry canteen part of factory); *Luttman v Imperial Chemical Industries Ltd* [1955] 3 All ER 481, [1955] 1 WLR 980 (workers' canteen part of factory); *Longhurst v Guildford, Godalming and District Water Board* [1963] AC 265, [1961] 3 All ER 545, HL (pump house, used for purpose which was not incidental to the main purpose of the factory, not part of factory); *Newton v John Stanning & Son Ltd* [1962] 1 All ER 78, [1962] 1 WLR 30, DC (pump house, in use as an integral part of factory, not treated as separate from the factory); *Powley v British Siddeley Engines Ltd* [1965] 3 All ER 612, [1966] 1 WLR 729 (administration block part of factory); *King v Magnatex Ltd* (1951) 44 R & IT 742 (workshop cleared for party not part of factory). If part of the factory is for the time being set aside for the purpose of construction or reconstruction it is a question of fact and degree whether the part set aside falls within the Factories Act 1961 s 175(6), but radical replacements are not normally incidental to the main purpose of the factory: *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co*; *Street v British Electricity Authority* [1952] 2 QB 399, [1952] 1 All ER 679, CA; *Walsh v Allweather Mechanical Grouting Co Ltd* [1959] 2 QB 300, [1959] 2 All ER 588, CA.

9 *Re LCC and Tubbs* (1903) 68 JP 29, DC (separate houses, connected by an iron gangway); *Hardcastle v Jones* (1862) 32 LJMC 49.

10 *Spacey v Dowlais Gas and Coke Co* [1905] 2 KB 879, CA (gas pipes leading from a gas works).



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### **321. Lines and sidings.**

Any line or siding, not being part of a railway<sup>1</sup> or tramway<sup>2</sup>, which is used in connection with and for the purposes of a factory, is deemed to be part of the factory<sup>3</sup>; if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding is deemed to be a separate factory<sup>4</sup>.

1 'Railway' means any railway used for the purposes of public traffic, whether passenger, goods or other traffic, and includes any works of the railway company connected with the railway; and 'railway company' includes a company or person working a railway under lease or otherwise: Factories Act 1961 s 176(1) (amended by the Transport Act 1962 s 95(1), (2), Sch 12 Pt II).

2 'Tramway' means a tramway authorised by or under any Act of Parliament and used for the purpose of public traffic: Factories Act 1961 s 176(1).

3 Factories Act 1961 s 175(3). As to the meaning of 'factory' see PARA 318 et seq.

4 Factories Act 1961 s 175(3).

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### **322. Workplaces.**

Any workplace<sup>1</sup> in which, with the permission of or under agreement with the owner<sup>2</sup> or occupier<sup>3</sup>, two or more persons carry on any work which would constitute the workplace a factory if they were in the employment of the owner or occupier, is deemed to be a factory<sup>4</sup>. If the workplace is not a tenement factory<sup>5</sup> or part of a tenement factory, the provisions of the Factories Act 1961 apply as if the owner or occupier were the occupier of a factory and the persons working in it were employed in the factory<sup>6</sup>.

1 'Workplace' means a definite and ascertainable area where work is constantly done: *Bennett v Harding* [1900] 2 QB 397. Cf the wider definition of workplace in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1): see PARA 456.

2 'Owner', as respects England and Wales, means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent: Factories Act 1961 s 176(1).

3 'Occupier' is not defined in the Factories Act 1961; see further PARA 862.

4 Factories Act 1961 s 175(5). As to the meaning of 'factory' see PARA 318 et seq.

5 As to the meaning of 'tenement factory' see PARA 865 text to notes 1-3.

6 Factories Act 1961 s 175(5).

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### **323. Crown factories and other publicly owned factories.**

Any premises belonging to or in the occupation of the Crown or any municipal or other public authority are not deemed not to be a factory, and building operations<sup>1</sup> or works of engineering construction<sup>2</sup> undertaken by or on behalf of the Crown or any such authority are not excluded from the operation of the Factories Act 1961 by reason only that the work carried on is not carried on by way of trade or for purposes of gain<sup>3</sup>.

1 As to the meaning of 'building operations' see PARA 315 note 1.

2 As to the meaning of 'works of engineering construction' see PARA 315 note 1.

3 Factories Act 1961 s 175(9). As to the meaning of 'factory' see PARA 318 et seq. This provision has effect as if references to the Crown included references to the service authorities of any visiting force and to a headquarters, by virtue of the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 13. See further **ARMED FORCES** vol 2(2) (Reissue) PARA 142. For special provisions with regard to factories of the Crown or service authorities of visiting forces, and building operations and works of engineering construction undertaken by or for the Crown or visiting forces see PARA 308. For examples of publicly owned premises which have been declared not to be factories see PARA 318 note 15.

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**324. Assumption as to date of construction, etc.**

For the purposes of the Factories Act 1961, machinery<sup>1</sup> or plant is deemed to have been constructed or reconstructed, and a factory<sup>2</sup> or building to have been constructed, reconstructed, extended, added to or converted for use as a factory, before any date, if the construction, reconstruction, extension, addition or conversion was begun before that date<sup>3</sup>.

1 As to the meaning of 'machinery' see PARA 313 note 3.

2 As to the meaning of 'factory' see PARA 318 et seq.

3 Factories Act 1961 s 176(2).

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### **325. Factories using mechanical power.**

For the purposes of the Factories Act 1961 a factory is not deemed to be a factory in which mechanical power is used if such power is used only for the purpose of heating, ventilating or lighting the workrooms or other parts of the factory<sup>1</sup>.

<sup>1</sup> Factories Act 1961 s 176(3). There is no definition of mechanical power in the Act, but it has been held to apply to steam used to force water into a boiler for preparing tripe (*Doswell v Cowell* (1906) 95 LT 38, CA), and to include electrical power (*Mumby v Volp* [1930] 1 KB 460) but not hand power (*Willmott v Paton* [1902] 1 KB 237, CA). An electrical switchboard is not a machine moved by mechanical power as it does not move at all: *Turner v Courtaulds Ltd* [1937] 1 All ER 467, DC.

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### ***C. THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963***

#### **(A) IN GENERAL**

#### **326. Safety in offices, shops and railway premises.**

Some aspects of safety, health and welfare in offices, shops and railway premises<sup>1</sup> are still regulated by the Offices, Shops and Railway Premises Act 1963<sup>2</sup> and subordinate legislation now made under the Health and Safety at Work etc Act 1974<sup>3</sup>. The Offices, Shops and Railway Premises Act 1963 does not apply (1) to any premises which, for the purposes of the Factories Act 1961, form part of a factory<sup>4</sup>; (2) with the exception of certain provisions relating to warehouses<sup>5</sup>, to any premises which, not being office premises, are used for the sale of fish<sup>6</sup> by wholesale<sup>7</sup> and constitute, or are comprised in, premises to which certain provisions of the Factories Act 1961 apply<sup>8</sup>; and (3) to any part below ground of premises which, for the purposes of the Mines and Quarries Act 1954, are a mine<sup>9</sup>.

The provisions set out in the following paragraphs<sup>10</sup> are largely concerned with technical issues regarding the application of the Offices, Shops and Railway Premises Act 1963. The remaining substantive health and safety obligations of that Act relate to:

- 39 (a) the cleanliness and illumination of common parts of buildings<sup>11</sup>;
- 40 (b) a restriction on the disclosure of information<sup>12</sup>; and
- 41 (c) offences and penalties<sup>13</sup>.

1 As to the meaning of 'office premises', 'shop premises' and 'railway premises' see the Offices, Shops and Railway Premises Act 1963 s 1; and PARA 327 et seq.

2 The Offices, Shops and Railway Premises Act 1963 does not extend to Northern Ireland: s 91(3) (amended by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I). It applies to the Isles of Scilly as if they were a district and the council of the Isles were a district council: Offices, Shops and Railway Premises Act 1963 s 88 (amended by the Local Government Act 1972 s 251 (2), Sch 29 para 31). Any reference in the Offices, Shops and Railway Premises Act 1963 to any other enactment must, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment: s 90(6).

Certain functions under the Offices, Shops and Railway Premises Act 1963 are relevant functions for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

3 As to regulations under the Health and Safety at Work etc Act 1974 see PARA 424.

4 Offices, Shops and Railway Premises Act 1963 s 85(1) (amended by SI 1974/1943). As to what premises form part of a factory see PARA 318 et seq.

5 See the Offices, Shops and Railway Premises Act 1963 s 75(3); and PARA 311.

6 'Fish' includes molluscs and crustaceans: Offices, Shops and Railway Premises Act 1963 s 90(1).

7 I.e. sale with a view to further retail to a consumer.

8 I.e. those provisions which apply by virtue of the Factories Act 1961 s 125(1) (which relates to docks, etc: see PARA 311 et seq): Offices, Shops and Railway Premises Act 1963 s 85(2).

- 9 Offices, Shops and Railway Premises Act 1963 s 85(3). As to the meaning of 'mine' see PARA 343 note 1.
- 10 See PARA 327 et seq.
- 11 See the Offices, Shops and Railway Premises Act 1963 ss 42, 43(2); and PARA 328.
- 12 See the Offices, Shops and Railway Premises Act 1963 s 59; and PARA 382.
- 13 See PARA 873 et seq. Additionally, the Offices, Shops and Railway Premises Act 1963 ss 4-17, relating to cleanliness, overcrowding, temperature, ventilation, lighting, sanitary conveniences, washing facilities, drinking water, accommodation for clothing, sitting and eating facilities, floors, passages and stairs and the fencing of exposed parts of machinery, are repealed subject to a saving relating to their operation as they have effect by virtue of s 90(4); and s 23 (prohibition of heavy work: see PARA 583) is repealed except in so far as it applies to any person specified in s 90(4): see the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 27(1), (2), Sch 2 Pt I; the Provision and Use of Work Equipment Regulations 1992, SI 1992/2932, reg 27, Sch 2 Pt I; the Manual Handling Operations Regulations 1992, SI 1992/2793, reg 8(1), Sch 2, Pt I. As to the Offices, Shops and Railway Premises Act 1963 s 90(4) see PARA 327 note 6.

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### **327. Premises to which the Offices, Shops and Railway Premises Act 1963 applies.**

The premises to which the Offices, Shops and Railway Premises Act 1963<sup>1</sup> applies are office premises<sup>2</sup>, shop premises<sup>3</sup> and railway premises<sup>4</sup>, being, in each case, premises where persons<sup>5</sup> are employed<sup>6</sup> to work<sup>7</sup>.

1 As to the Offices, Shops and Railway Premises Act 1963 see PARA 326.

2 As to the meaning of 'office premises' see PARA 328.

3 As to the meaning of 'shop premises' see PARA 329.

4 As to the meaning of 'railway premises' see PARA 330.

5 Since, by virtue of the Interpretation Act 1978 s 6, Sch 2 para 2, the plural includes the singular, premises are not outside the Offices, Shops and Railway Premises Act 1963 merely because only one person is employed to work there: see *Griffith v Ferrier* 1952 JC 56. As to premises in relation to factories see PARA 318 note 3.

6 'Employed' means employed under a contract of service or apprenticeship, whether oral or in writing, express or implied: Offices, Shops and Railway Premises Act 1963 s 90(1). For special provisions in the case of railway employment see PARA 330 note 5. The following are expressly taken to be employed: (1) a person appointed under the Registration Service Act 1953 s 6 or s 7 who exercises and performs his powers and duties in premises provided and maintained by the council within whose area his district or sub-district is situated (see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 610-611); (2) a member of a police force maintained by a police authority (see **POLICE** vol 36(1) (2007 Reissue) PARA 139); (3) a member of a police force seconded to the Serious Organised Crime Agency to serve as a member of its staff (see **POLICE** vol 36(1) (2007 Reissue) PARA 348); Offices, Shops and Railway Premises Act 1963 s 90(4) (amended by the Registration of Births, Deaths and Marriages (Scotland) Act 1965 s 58(2), Sch 2; and the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 10).

7 Offices, Shops and Railway Premises Act 1963 s 1(1). For exceptions see PARAS 326, 333 et seq.



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### **328. Meaning of 'office premises'.**

'Office premises' means a building<sup>1</sup> or part of a building<sup>2</sup>, being a building or part the sole or principal use of which is as an office or for office purposes<sup>3</sup>; and 'office purposes' include those of administration, clerical work<sup>4</sup>, handling money and telephone and telegraph operating<sup>5</sup>. For the purposes of the Offices, Shops and Railway Premises Act 1963 premises occupied together with office premises for the purposes of the activities carried on there are treated as forming part of the office premises<sup>6</sup>.

1 Except in the Offices, Shops and Railway Premises Act 1963 s 1(4) (which relates to railway premises: see PARA 330), 'building' includes structure: s 90(1). Special provisions apply with respect to buildings of which part only consists of premises to which the Act applies: see s 42. Every common part of such a building and all furniture, furnishings and fittings in such a part must be kept in a clean state: s 42(2)(a). Effective provision must be made for securing and maintaining, in every part of a common part of such a building in which persons are working or passing, suitable and sufficient lighting, whether natural or artificial: s 42(3)(a). All glazed windows and skylights used for the lighting of a part of a common part of such a building in which the securing of lighting is so required to be provided for must, so far as reasonably practicable, be kept clean on both the inner and outer surfaces and free from obstruction (s 42(3)(c)); but this does not affect the whitewashing or shading of windows or skylights for the purpose of mitigating heat or glare (s 42(3) proviso). All apparatus installed in a common part of such a building for producing artificial lighting in a part of that part in which the securing of lighting is so required to be provided for must be properly maintained: s 42(3)(d).

Special provisions also apply with respect to buildings plurally owned: see s 43. The provisions of s 42(2)(a), (3) (a), (c), (d) apply, with the necessary modifications, for securing the cleanliness and illumination of common parts of such buildings: see s 43(2).

2 Where a building as a whole does not qualify as office premises, eg where it is a library, nevertheless if a definable part of that building such as a room is used solely or principally as an office or for office purposes it is 'office premises' within the Offices, Shops and Railway Premises Act 1963 s 1(2)(a): *Oxfordshire County Council v University of Oxford* (1980) Times, 10 December, DC.

3 Offices, Shops and Railway Premises Act 1963 ss 1(2)(a), 90(1).

4 'Clerical work' includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication: Offices, Shops and Railway Premises Act 1963 s 1(2)(c).

5 Offices, Shops and Railway Premises Act 1963 s 1(2)(b). Where a building as a whole constitutes office premises, the fact that a part of it is used neither as an office nor for office purposes does not exclude the building from the statutory definition: *Westwood v Post Office* [1974] AC 1, [1973] 3 All ER 184, HL (lift motor room on roof of telephone exchange held to be office premises).

6 Offices, Shops and Railway Premises Act 1963 s 1(2). See *Westwood v Post Office* [1974] AC 1, [1973] 3 All ER 184, HL, in which an alternative ground of the decision was that the lift motor room was occupied together with office premises for the purposes of the activities carried on there. Office premises comprised in fuel storage premises are deemed not to form part of the fuel storage premises: Offices, Shops and Railway Premises Act 1963 s 1(3). As to fuel storage premises see s 1(3)(a)(v); and PARA 329 note 7.

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### **329. Meaning of 'shop premises'.**

'Shop premises' means (1) a shop<sup>1</sup>; (2) a building<sup>2</sup> or part of a building, being a building or part which is not a shop but of which the sole or principal use is the carrying on there of retail trade or business<sup>3</sup>; (3) a building occupied by a wholesale dealer or merchant where goods are so kept, but not including a warehouse<sup>4</sup> belonging to the owners, trustees or conservators of a dock, wharf or quay<sup>5</sup>; (4) a building to which members of the public are invited to resort for the purpose of delivering there goods for repair or other treatment, or of themselves there carrying out repairs to, or other treatment of, goods, or a part of a building to which members of the public are invited to resort for that purpose<sup>6</sup>; and (5) fuel storage premises<sup>7</sup>.

For the purposes of the Offices, Shops and Railway Premises Act 1963, premises occupied together with a shop or with a building or part of a building falling within head (2), head (3) or head (4) above for the purposes of the trade or business carried on there are treated as forming part of the shop or building or part of the building<sup>8</sup>.

1 Offices, Shops and Railway Premises Act 1963 ss 1(3)(a)(i), 90(1). 'Shop' is not defined in the Act. Since a shop is 'shop premises', nothing can be a shop unless it is also premises; so a mobile shop is not within the Offices, Shops and Railway Premises Act 1963.

2 As to the meaning of 'building' see PARA 328 note 1.

3 Offices, Shops and Railway Premises Act 1963 s 1(3)(a)(ii). 'Retail trade or business' includes the sale to members of the public of food or drink for immediate consumption, retail sales by auction and the business of lending books or periodicals for the purpose of gain: s 1(3)(b). This definition is not intended to be comprehensive: see *Dilworth v Comr of Stamps* [1899] AC 99, PC.

4 Such warehouses fall within the provisions of the Factories Act 1961 s 125, provided that mechanical power is used: see PARA 311.

5 Offices, Shops and Railway Premises Act 1963 s 1(3)(a)(iii).

6 Offices, Shops and Railway Premises Act 1963 s 1(3)(a)(iv).

7 Offices, Shops and Railway Premises Act 1963 s 1(3)(a)(v). 'Fuel storage premises' are premises occupied for the purposes of a trade or business which consists of or includes the sale of solid fuel (ie coal, coke, and any solid fuel derived from coal or of which coal or coke is a constituent) being premises used for the storage of such solid fuel intended to be sold in the course of that trade or business, but not including dock storage or colliery storage premises: ss 1(3)(a)(v), (c), 90(1).

8 Offices, Shops and Railway Premises Act 1963 s 1(3), which also makes similar provision in the case of fuel storage premises.

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### **330. Meaning of 'railway premises'.**

'Railway premises' means a building<sup>1</sup> occupied by railway undertakers<sup>2</sup> for the purposes of the railway undertaking carried on by them and situated in the immediate vicinity of the permanent way, or a part (so occupied) of a building so situated<sup>3</sup>. It does not, however, include (1) office or shop premises<sup>4</sup>; (2) premises used for the provision of living accommodation for persons employed<sup>5</sup> in the undertaking, or hotels<sup>6</sup>; or (3) premises which are electrical stations<sup>7</sup>.

1 As to the meaning of 'building' see PARA 328 note 1. In this context it does not include 'structure': Offices, Shops and Railway Premises Act 1963 s 90(1).

2 'Railway undertakers' means any persons authorised by an enactment or a provision of an order or scheme made under or confirmed by an Act to construct, work or carry on a railway: Offices, Shops and Railway Premises Act 1963 s 90(1). Railway running sheds are, in general, subject to the provisions of the Factories Act 1961: see PARA 319 note 10. Since the Offices, Shops and Railway Premises Act 1963 s 1 does not apply to factories (see s 85(1); and PARA 326), such sheds are not railway premises within s 1(4).

3 Offices, Shops and Railway Premises Act 1963 ss 1(4), 90(1).

4 I.e. premises defined in the Offices, Shops and Railway Premises Act 1963 s 1(2), (3) (see PARAS 328-329): s 1(4)(a).

5 As to the meaning of 'employed' see PARA 327 note 6. Persons employed by railway undertakers to do work, the general control of the doing of which is exercised at railway premises, or at office premises occupied by the undertakers for the purposes of the railway undertaking carried on by them and situated in the immediate vicinity of the permanent way, are deemed to be employed to work in the premises at which the general control of the doing of their work is exercised notwithstanding that their work is in fact done elsewhere: Offices, Shops and Railway Premises Act 1963 s 90(3)(a). Neither railway premises nor such office premises are to be taken to be premises in the case of which persons are employed to work there by reason only of the fact that persons employed by the undertakers who occupy the premises resort to them for the purpose only of discharging duties whose discharge is incidental to the work that they are primarily employed to do: s 90(3)(b).

6 Offices, Shops and Railway Premises Act 1963 s 1(4)(b).

7 I.e. premises where such processes or operations as are mentioned in the Factories Act 1961 s 123(1) (see PARA 309) are carried on, and for such supply as is mentioned there: Offices, Shops and Railway Premises Act 1963 s 1(4)(c).

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### **331. Ancillary premises.**

For the purposes of the Offices, Shops and Railway Premises Act 1963 premises maintained in conjunction with office<sup>1</sup>, shop<sup>2</sup> or railway premises<sup>3</sup> for the purpose of the sale or supply for immediate consumption of food or drink wholly or mainly to persons employed<sup>4</sup> to work in the premises in conjunction with which they are maintained are treated as premises of the class within which fall the premises in conjunction with which they are maintained, if they neither form part of those premises nor are treated<sup>5</sup> as forming part of them<sup>6</sup>.

1 As to the meaning of 'office premises' see PARA 328.

2 As to the meaning of 'shop premises' see PARA 329.

3 As to the meaning of 'railway premises' see PARA 330.

4 As to the meaning of 'employed' see PARA 327 note 6.

5 I.e. by virtue of the Offices, Shops and Railway Premises Act 1963 s 1(2), (3) (see PARAS 328 text and note 6, 329 text to note 8): Offices, Shops and Railway Premises Act 1963 s 1(5).

6 Offices, Shops and Railway Premises Act 1963 s 1(5).

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### **332. Application to the Crown.**

Specified provisions<sup>1</sup> of the Offices, Shops and Railway Premises Act 1963, in so far as they impose duties failure to comply with which might give rise to liability in tort<sup>2</sup>, bind the Crown, and accordingly, for the purposes of those provisions and regulations under any of them, persons in the service of the Crown<sup>3</sup> are taken to be employed<sup>4</sup> if otherwise they would not be so taken<sup>5</sup>.

1     Ie the Offices, Shops and Railway Premises Act 1963 ss 4-17, 42, 43.

2     Liability in tort towards a member of the armed forces of the Crown is not included: Offices, Shops and Railway Premises Act 1963 s 83(6).

3     Members of the armed forces of the Crown are not included: Offices, Shops and Railway Premises Act 1963 s 83(6).

4     As to the meaning of 'employed' see PARA 327 note 6.

5     Offices, Shops and Railway Premises Act 1963 s 83(1) (amended by SI 1975/1011; SI 1976/2005; and SI 1992/2793).

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## (B) EXCEPTIONS

### **333. Relatives and outworkers.**

The Offices, Shops and Railway Premises Act 1963 does not apply to any premises to which it would otherwise apply<sup>1</sup> if none of the persons employed<sup>2</sup> to work in the premises is other than the husband, wife, civil partner, parent, grandparent, son, daughter, grandchild, brother or sister of the person by whom they are so employed<sup>3</sup>.

For the purposes of the Act, a dwelling is not taken to constitute or comprise premises to which the Act applies by reason only that a person dwelling there who is employed by a person not dwelling there does there the work that he is employed to do in compliance with a term of his contract of service that he is to do it there<sup>4</sup>.

<sup>1</sup> As to the premises to which the Offices, Shops and Railway Premises Act 1963 applies see s 1; and PARA 327.

<sup>2</sup> As to the meaning of 'employed' see PARA 327 note 6.

<sup>3</sup> Offices, Shops and Railway Premises Act 1963 s 2(1) (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 23).

<sup>4</sup> Offices, Shops and Railway Premises Act 1963 s 2(2).

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### **334. Short working week.**

The Offices, Shops and Railway Premises Act 1963 does not apply to any premises to which it would otherwise apply<sup>1</sup> if the period of time worked there during each week<sup>2</sup> does not normally exceed 21 hours<sup>3</sup>.

1 As to the premises to which the Offices, Shops and Railway Premises Act 1963 applies see s 1; and PARA 327.

2 'Week' means the period between midnight on Saturday night and midnight on the succeeding Saturday night: Offices, Shops and Railway Premises Act 1963 s 90(1).

3 Offices, Shops and Railway Premises Act 1963 s 3(1). For the purposes of s 3(1) the period of time worked in any premises is deemed to be (1) as regards a week in which one person only is employed to work in the premises, the period of time worked by him there (s 3(2)(a)); and (2) as regards a week in which two persons or more are so employed, the sum of the periods of time for which respectively those persons work there (s 3(2)(b)).

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### **335. Premises occupied for transitory purposes.**

It is a defence in any legal proceedings to recover damages and in any prosecution, in so far as the proceedings are or prosecution is based upon an allegation of a contravention<sup>1</sup>, in relation to any premises, of a provision of the Offices, Shops and Railway Premises Act 1963 or regulations made under it, to prove that at the time of the alleged contravention the premises were occupied for a purpose that was accomplished before the expiration of a period<sup>2</sup> beginning with the day on which they were occupied for that purpose and of a length of six months if the premises consist of a movable structure or six weeks if they do not<sup>3</sup>.

1 In relation to a provision of the Offices, Shops and Railway Premises Act 1963 or of regulations made under it, 'contravention' includes a failure to comply with the provision; and the expression 'contravene' is to be construed accordingly: s 90(1).

2 In calculating the period, the day on which the premises were occupied must be included: *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, DC; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA; and see **TIME** vol 97 (2010) PARA 329 et seq.

3 Offices, Shops and Railway Premises Act 1963 s 86(1).



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### **336. Visiting forces.**

The Offices, Shops and Railway Premises Act 1963 does not operate to create, towards a member of the naval, military or air forces of certain specified countries<sup>1</sup> or of any designated<sup>2</sup> country, a liability in tort against the government of that country in respect of anything done or omitted by it or against another member of those forces in respect of anything done or omitted by him in the course of his duty<sup>3</sup>.

The 1963 Act does not operate to create, towards a member of a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964<sup>4</sup> who is a member of the naval, military or air forces of any country, a liability in tort against the headquarters or organisation in respect of anything done or omitted by it or against another member of that headquarters or organisation in respect of anything done or omitted by him in the course of his duty<sup>5</sup>.

1 The countries specified for these purposes are: India, Pakistan, Ghana, the Federation of Malaya, the Republic of Cyprus, Tanzania, Zambia, Botswana, Lesotho, Singapore, Swaziland, Tonga, Bangladesh, Western Samoa, Nauru, the New Hebrides, Brunei, Maldives, Namibia, South Africa, Cameroon and Mozambique: Offices, Shops and Railway Premises Act 1963 s 84(2) (amended by the Zambia Independence Act 1964 s 2(2), Sch 1 para 8; the Botswana Independence Act 1966 s 2(2), Schedule para 8(1); the Lesotho Independence Act 1966 s 2(2), Schedule para 8(1); the Singapore Act 1966 s 1(2), Schedule para 5; the Swaziland Independence Act 1968 s 2(2), Schedule Pt I para 8(1); the Tonga Act 1970 s 1(3), Schedule para 7(1); the Bangladesh Act 1973 s 1(3), (4), Schedule para 3(1); the Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980 Schedule para 13; the New Hebrides Act 1980 Schedule para 8; the Brunei and Maldives Act 1985 s 1, Schedule; the Pakistan Act 1990 s 1, Schedule para 6; the Namibia Act 1991 s 1, Schedule para 5; the South Africa Act 1995 s 1, Schedule para 6; and the Commonwealth Act 2002 s 2, Sch 2 para 4(a)).

2 Is designated for the purposes of any provision of the Visiting Forces Act 1952 by Order in Council under s 1(2): see **ARMED FORCES** vol 2(2) (Reissue) PARA 138.

3 Offices, Shops and Railway Premises Act 1963 s 84(1), (2) (as amended: see note 1).

4 As to such designation see **ARMED FORCES** vol 2(2) (Reissue) PARA 150.

5 Offices, Shops and Railway Premises Act 1963 s 84(2A) (added SI 1965/1536; substituted by SI 1999/1736).

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## ***D. OTHER RELEVANT LEGISLATION***

### **337. Legislation relating to remuneration and employment.**

Minimum remuneration is prescribed by orders made under the National Minimum Wage Act 1998<sup>1</sup>. Working time and holiday entitlement are regulated under the Working Time Regulations 1998<sup>2</sup>.

The employment of young persons<sup>3</sup> in factories is regulated by Part VI of the Factories Act 1961<sup>4</sup>. The employment of children in any industrial undertaking or in a mine or quarry is prohibited<sup>5</sup>. Other protective measures relating to the employment of children and of pregnant women or women of child-bearing age are discussed in a later part of this title<sup>6</sup>.

Recruitment for employment may be effected through employment services, and provision has been made for the establishment of public authorities to assist persons to obtain employment and to provide training for employment<sup>7</sup>.

Where a provision, criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, places a disabled person concerned<sup>8</sup> at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect<sup>9</sup>. Unlawful discrimination against an employee or potential employee on grounds of race, sex, disability or sexual orientation is dealt with elsewhere in this work<sup>10</sup>.

At common law, a contract of employment may be frustrated through a serious illness or accident which befalls the employee<sup>11</sup>. Short of that, it is possible for a dismissal on the grounds of ill health to be fair if an employee is incapable of performing work of the kind which he was employed to do by the employer, if the dismissal is reasonable in all the circumstances and provided a correct procedure is followed<sup>12</sup>.

1 See **EMPLOYMENT** vol 39 (2009) PARA 142 et seq.

2 Ie the Working Time Regulations 1998, SI 1998/1833: see PARA 452; and **EMPLOYMENT** vol 39 (2009) PARA 243 et seq.

3 As to the meaning of 'young person' see PARA 316 note 1.

4 Ie, now, only by the Factories Act 1961 s 119: see PARA 847.

5 Employment of Women, Young Persons, and Children Act 1920 s 1(1). See s 1(6) (amended by virtue of the Mines and Quarries Act 1954 s 188, Sch 4), which incorporates that Act with the subsequent legislation. 'Child' is not defined in the Employment of Women, Young Persons, and Children Act 1920, but as to its meaning in the Factories Act 1961 see PARA 316 note 1. As to industrial undertakings see the Employment of Women, Young Persons, and Children Act 1920 s 4, Schedule Pt I (s 4 amended by the Statute Law (Repeals) Act 1978 and the Employment Act 1989 s 29(3), Sch 6 para 2). The Employment of Women, Young Persons, and Children Act 1920 does not apply to industrial undertakings where only members of the same family are employed: s 3(2).

6 See PARAS 453-454.

7 See **EMPLOYMENT** vol 40 (2009) PARA 562 et seq.

8 For these purposes, the 'disabled person concerned' means (1) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment; (2) in any other case, a disabled person who is (a) an applicant for the employment concerned; or (b) an employee of the employer concerned: Disability Discrimination Act 1995 s 4A(2) (s 4A added by SI 2003/1673).

9 Disability Discrimination Act 1995 s 4A(1) (as added: see note 8). Nothing in s 4A, however, imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know (1) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or (2) in any case, that that person has a disability and is likely to be affected in the way mentioned in s 4A(1): s 4A(3) (as so added). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 532.

10 See **DISCRIMINATION**.

11 See **EMPLOYMENT** vol 40 (2009) PARA 686.

12 See **EMPLOYMENT** vol 40 (2009) PARAS 730, 732. Allegations that an employer is responsible for the illness of an employee should be considered when assessing whether a compensatory award for unfair dismissal is just and equitable: *Edwards v Governors of Hanson School* [2001] IRLR 733, EAT; *McAdie v Royal Bank of Scotland* [2007] EWCA Civ 806, [2007] IRLR 895, [2008] ICR 1087. As to an employer's duty to dismiss an employee for his own good to protect him from physical danger caused by ill health see *Coxall v Goodyear Great Britain Ltd* [2002] EWCA Civ 1010, [2003] 1 WLR 536, [2003] ICR 152, [2002] All ER (D) 303 (Jul); cf PARA 414.

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### **338. Legislation relating to planning and buildings.**

Financial assistance may be made available for factories in development areas, and land may be compulsorily acquired there for the establishment of industrial undertakings<sup>1</sup>. Factories, shops and offices must comply with the town and country planning legislation<sup>2</sup>.

The construction of factory buildings may be regulated<sup>3</sup>, and, for example, the height of chimneys must be approved by the relevant local authority<sup>4</sup>. The Building Act 1984<sup>5</sup>, the Building Regulations 2000<sup>6</sup> and the approved documents<sup>7</sup> which contain substantive provisions supporting those regulations are discussed elsewhere in this work<sup>8</sup>.

1 See the Industrial Development Act 1982; and **TRADE AND INDUSTRY**. As to the procedure on compulsory acquisition see **COMPULSORY ACQUISITION OF LAND**.

2 See generally **TOWN AND COUNTRY PLANNING**.

3 Eg as to conservation of fuel and power: see the Building Regulations 2000, SI 2000/2531, reg 4, Sch 1 Pt L1 (substituted by SI 2006/652; and amended by SI 2007/3384); and **BUILDING** vol 4(2) (2002 Reissue) PARA 306 et seq.

4 See the Clean Air Act 1993 ss 14-16; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 234-235. 'Local authority' means, in England, the council of a district or a London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, or the Under Treasurer of the Middle Temple; and in Wales, the council of a county or county borough: s 64(1) (amended by the Local Government (Wales) Act 1994 ss 22(3), 66(8), Sch 9 para 18, Sch 18). As to fire precautions to be observed see PARA 660; and **FIRE SERVICES**.

5 See **BUILDING** vol 4(2) (2002 Reissue) PARA 301 et seq. The Health and Safety at Work etc Act 1974 Pt III (ss 61-76) (building regulations etc) was repealed by the Building Act 1984 s 133(2), Sch 7.

6 Ie the Building Regulations 2000, SI 2000/2531: see **BUILDING** vol 4(2) (2002 Reissue) PARA 306 et seq.

7 See **BUILDING** vol 4(2) (2002 Reissue) PARA 321.

8 See generally **BUILDING**.

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### **339. Legislation concerning fuel and power.**

Although regulations governing safety in relation to the generation and distribution of electricity on factory premises are in force under the Health and Safety at Work etc Act 1974<sup>1</sup>, the main body of legislation concerning the generation and supply of electrical energy is contained in statutes distinct from that Act<sup>2</sup>. The statutory code that governs the supply of gas to factories and other premises and the standards of quality of gas to be supplied are discussed elsewhere in this work<sup>3</sup>. Legislation concerning the coal industry<sup>4</sup>, together with that governing mines and quarries generally, is the subject of a separate title in this work<sup>5</sup>, although health and safety in mines and quarries is dealt with below<sup>6</sup>.

1 See the Electricity at Work Regulations 1989, SI 1989/635; and PARAS 605-608.

2 See generally the Electricity Act 1989; the Utilities Act 2000; and **FUEL AND ENERGY**.

3 See generally the Gas Act 1986; the Gas Act 1995; the Utilities Act 2000; and **FUEL AND ENERGY**.

4 See the Coal Industry Act 1987; the Coal Industry Act 1994; and **MINES, MINERALS AND QUARRIES**.

5 See generally **MINES, MINERALS AND QUARRIES**. The Factories Act 1961 does not, in general, apply to mines and quarries: see PARA 317.

6 See PARA 748 et seq.

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## **(ii) European Union Legislation**

### **340. Treaty provisions under which health and safety legislation is made.**

The common activities of the European Community are stated in the EC Treaty to include the promotion of co-ordination between employment policies of the member states<sup>1</sup> and a contribution to the attainment of a high level of health protection<sup>2</sup>. In all its specified activities<sup>3</sup> the Community must aim to eliminate inequalities, and to promote equality, between men and women<sup>4</sup>.

The Community acts within the limits of the powers conferred upon it by the EC Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community is to take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community must not go beyond what is necessary to achieve the objectives of the EC Treaty<sup>5</sup>. Member states are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EC Treaty or resulting from action taken by the institutions of the Community and are to facilitate the achievement of the Community's tasks<sup>6</sup>.

The Community and the member states, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, are to have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Community and the member states are to implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy<sup>7</sup>. With a view to achieving these objectives, the Community is to support and complement the activities of the member states in the following fields:

- 42 (1) improvement in particular of the working environment to protect workers' health and safety;
- 43 (2) working conditions;
- 44 (3) social security and social protection of workers<sup>8</sup>;
- 45 (4) protection of workers where their employment contract is terminated<sup>9</sup>;
- 46 (5) the information and consultation of workers<sup>10</sup>;
- 47 (6) representation and collective defence of the interests of workers and employers, including co-determination<sup>11</sup>;
- 48 (7) conditions of employment for third-country nationals legally residing in Community territory;
- 49 (8) the integration<sup>12</sup> of persons excluded from the labour market;
- 50 (9) equality between men and women with regard to labour market opportunities and treatment at work;
- 51 (10) the combating of social exclusion;

- 52 (11) the modernisation of social protection systems without prejudice to head (3) above<sup>13</sup>.

They are to abstain from any measure which could jeopardise the attainment of the objectives of the EC Treaty<sup>14</sup>. To this end, the EC Council:

- 53 (a) may adopt measures designed to encourage co-operation between member states through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the member states;
- 54 (b) may adopt, in the fields referred to in heads (1) to (9) above, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the member states. Such directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings<sup>15</sup>.

A member state may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to heads (a) and (b) above<sup>16</sup>.

An EC directive is binding, as to the result to be achieved, upon each member state to which it is addressed, but is to leave to the national authorities the choice of form and methods<sup>17</sup>. A directive must state the reasons on which it is based<sup>18</sup> and must be published in the Official Journal<sup>19</sup>. It will specify the latest date by which it is to be implemented by the member states and transposed into domestic law<sup>20</sup>.

The European Communities Act 1972 makes provision for the implementation of Community obligations by means of orders, rules, regulations or schemes made by a designated Minister of the Crown or government department<sup>21</sup>. A directive does not have any effect in domestic law until the date at which it is due to have been implemented but after that date, if the United Kingdom has not adopted the required implementing measures, rights arising from that directive may be enforced by an individual against the United Kingdom government<sup>22</sup> but not against other individuals<sup>23</sup>. If domestic legislation already imposes obligations higher than the minimum obligations sought to be imposed by a directive, those higher obligations are to be maintained<sup>24</sup>.

1 EC Treaty art 3(1)(i). The provisions of the EC Treaty (Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179)) cited in this title are as renumbered by the Treaty of Amsterdam and as amended, where relevant, by that Treaty and by the Treaty of Nice, and as set out in a consolidated version in OJ C325, 24 December 2002.

2 EC Treaty art 3(1)(p).

3 ie the activities specified in the EC Treaty art 3(1).

4 EC Treaty art 3(2). As to the implementation of equal opportunities legislation in domestic law, and the repeal of a number of former prohibitions on the employment of women in particular industries, see PARA 453. See further **DISCRIMINATION**.

5 EC Treaty art 5.

6 EC Treaty art 10.

7 See the EC Treaty art 136.

8 As to social security see **SOCIAL SECURITY AND PENSIONS**.

9 As to employment protection see **EMPLOYMENT**.

10 As to information and consultation on health and safety matters see PARAS 394 et seq, 449 et seq, 739 et seq.

11 Is subject to the EC Treaty art 137(5): see note 16. See generally **EMPLOYMENT; TRADE AND INDUSTRY**.

12 Is without prejudice to the EC Treaty art 150 (vocational training policy).

13 EC Treaty art 137(1)(a)-(k).

14 EC Treaty art 137(1). As to the interpretation of the somewhat differently worded art 118A, which is replaced by art 137, see Case C-84/94 *United Kingdom v EU Council* [1996] All ER (EC) 877, [1996] ECR I-5755 (the concepts 'working environment', 'safety' and 'health' should not be interpreted restrictively as not embracing 'all factors, physical or otherwise, capable of affecting the health and safety of the worker in the working environment').

15 EC Treaty art 137(2)(a), (b). The Council must act in accordance with the procedure referred to in art 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in art 137(1)(c), (d), (f) and (g) (see heads (3), (4), (6), (7) in the text), where the Council must act unanimously on a proposal from the Commission, after consulting the European Parliament and those Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in art 251 applicable to art 137(1)(d), (f) and (g): art 137(2).

Where reference is made in the EC Treaty to art 251 for the adoption of an act, the following procedure applies: art 251(1). The Commission must submit a proposal to the European Parliament and the Council. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament (1) if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended; (2) if the European Parliament does not propose any amendments, may adopt the proposed act; (3) must otherwise adopt a common position and communicate it to the European Parliament. The Council must inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission must inform the European Parliament fully of its position. If, within three months of such communication, the European Parliament (a) approves the common position or has not taken a decision, the act in question is to be deemed to have been adopted in accordance with that common position; (b) rejects, by an absolute majority of its component members, the common position, the proposed act is to be deemed not to have been adopted; (c) proposes amendments to the common position by an absolute majority of its component members, the amended text must be forwarded to the Council and to the Commission, which must deliver an opinion on those amendments: art 251(2). If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question is to be deemed to have been adopted in the form of the common position thus amended; however, the Council must act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, must within six weeks convene a meeting of the Conciliation Committee: art 251(3). The Conciliation Committee, which is to be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission must take part in the Conciliation Committee's proceedings and must take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee must address the common position on the basis of the amendments proposed by the European Parliament: art 251(4). If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, each has a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it is to be deemed not to have been adopted: art 251(5). Where the Conciliation Committee does not approve a joint text, the proposed act is to be deemed not to have been adopted: art 251(6). The periods of three months and six weeks referred to may be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council: art 251(7). The procedure under art 251 is known as the 'co-decision' procedure. As to the Commission see further PARA 347.

16 EC Treaty art 137(3). In this case, the member state must ensure that, no later than the date on which a directive must be transposed in accordance with art 249, management and labour have introduced the necessary measures by agreement, the member state concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive: art 137(3). The provisions adopted pursuant to art 137: (1) are not to affect the right of member states to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof; (2) are not to prevent any member state from maintaining or introducing more stringent protective measures compatible with the EC Treaty: art 137(4). The provisions of art 137 do not apply to pay,



the right of association, the right to strike or the right to impose lock-outs: art 137(5). As to co-operation and co-ordination between member states in matters relating to, inter alia, employment, labour law and working conditions, basic and advanced vocational training, the prevention of occupational accidents and diseases and occupational hygiene see art 140.

17 EC Treaty art 249.

18 EC Treaty art 253.

19 EC Treaty art 254. A directive adopted in accordance with the procedure under art 251 (see note 15) must be signed by the President of the European Parliament and by the President of the Council: art 254(1).

20 See eg European Parliament and EC Council Directive 2002/44 (OJ L177, 06.07.2002, p 13) of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) which was to be implemented by 6 July 2005 (art 14); and PARA 595. If no such date is specified in a directive adopted in accordance with the procedure under the EC Treaty art 251, it will enter into force on the twentieth day following its publication: art 254(1).

21 See the European Communities Act 1972 s 2(2) (amended by the Legislative and Regulatory Reform Act 2006 s 27(1)(a); further amended, as from a day to be appointed, by the European Union (Amendment) Act 2008 s 3(3), Schedule Pt 1 to replace the reference to Community obligations with a reference to EU obligations; at the date at which this title states the law, no such day had been appointed). As to whether EU law takes precedence over the domestic law of member states see the European Communities Act 1972 s 2(4) (amended by the Legislative and Regulatory Reform Act 2006 s 27(1)(b)); and see eg Case 6/64 *Costa v ENEL* [1964] ECR 585, [1964] CMLR 425, ECJ; Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr -und Vorratsstell für Getreide un Futtermittel* [1970] ECR 1125, [1972] CMLR 255, ECJ; Case C-48/93 *R v Secretary of State for Transport, ex p Factortame Ltd (No 4)* [1996] QB 404, [1996] All ER (EC) 301, ECJ; *R v Secretary of State for Transport, ex p Factortame Ltd (No 5)* [2000] 1 AC 524, [1999] 4 All ER 906, HL; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 11.

22 See eg Case 148/78 *Publico Ministero v Ratti* [1979] ECR 1629, [1980] 1 CMLR 96, ECJ; Case 271/91 *Marshall v Southampton and South West Hampshire Health Authority (Teaching) (No 2)* [1994] QB 126, [1993] 4 All ER 586, ECJ.

23 See eg Case 271/91 *Marshall v Southampton and South West Hampshire Health Authority (Teaching) (No 2)* [1994] QB 126, [1993] 4 All ER 586, ECJ; *R v Secretary of State for Transport, ex p Factortame Ltd (No 4)* [1996] QB 404, [1996] All ER (EC) 301, ECJ.

24 See Case C-2/97 *Società Italiana Petroli SpA (IP) v Borsana Srl* [1998] ECR I-8597, [2001] 1 CMLR 714, ECJ (a national provision which required the employer to reduce workers' exposure to a carcinogen irrespective of the assessment of risk was not contrary to EC Council Directive 90/394 (OJ L196, 26.07.1990, p 1) on the protection of workers from the risks related to exposure to carcinogens at work where it constituted a more stringent measure for the protection of working conditions authorised by the EC Treaty and by that Directive; further, a member state was not precluded from setting a time-limit for adapting existing working equipment that expired before the date laid down in EC Council Directive 89/655 (OJ L393, 30.12.1989, p 13) concerning the minimum safety and health requirements for the use of work equipment by workers at work, provided that the time-limit was not so short that it did not enable employers to effect the adaptation or entail a cost that was clearly excessive as compared with what they would have had to meet if the time-limit had been longer). See also *Stark v Post Office* [2000] ICR 1013, [2000] All ER (D) 276, CA.

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### **341. The framework directive and 'daughter' directives.**

An EC Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (known as the 'framework directive')<sup>1</sup> contains general principles concerning the prevention<sup>2</sup> of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers<sup>3</sup> and their representatives, as well as general guidelines for the implementation of those principles<sup>4</sup>. The framework directive is stated to apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc)<sup>5</sup>; but is not applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it; in that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of the directive<sup>6</sup>.

The framework directive imposes general obligations on employers in relation to health and safety<sup>7</sup> as well as particular obligations in relation to protective and preventive services<sup>8</sup>, first aid, fire-fighting and evacuation of workers in the event of serious and imminent danger<sup>9</sup>, documentation<sup>10</sup>, worker information<sup>11</sup>, consultation and participation of workers<sup>12</sup>, and training of workers<sup>13</sup>. The framework directive also imposes obligations on workers, including a general responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or omissions at work in accordance with his training and the instructions given by his employer<sup>14</sup>.

Other matters for which provision is made by the framework directive include provision for health surveillance<sup>15</sup> and the protection of groups of workers at particular risk<sup>16</sup>.

The framework directive has been implemented in domestic law by a number of health and safety regulations<sup>17</sup>. The framework directive also makes provision for the adoption of individual directives in the areas, inter alia, of work places, work equipment, personal protective equipment, work with visual display units, handling of heavy loads involving risk of back injury, temporary or mobile work sites and fisheries and agriculture<sup>18</sup>. A number of such directives (known as 'daughter' directives) have been adopted<sup>19</sup> and implemented into domestic legislation by health and safety regulations<sup>20</sup>.

1    I.e. EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) (amended by European Parliament and EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1); European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21); and European Parliament and EC Council Regulation 1137/2008 (OJ L311, 21.11.2008, p 1)). As to implementation into the domestic law of member states see eg Case C-425/01 *EC Commission v Portugal* [2003] ECR I-6025, [2003] All ER (D) 169 (Jun), ECJ; Case C-441/01 *EC Commission v Netherlands* [2003] ECR I-5463, [2003] All ER (D) 51 (Jun), ECJ.

2    'Prevention' means all the steps or measures taken or planned at all stages of work in the undertaking to prevent or reduce occupational risks: EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 3(d).

3    'Worker' means any person employed by an employer, including trainees and apprentices but excluding domestic servants: EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 3(a). 'Employer' means any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment: art 3(b).

4    See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 1.

- 5 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 2(1).
- 6 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 2(2).
- 7 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) arts 5, 6. By placing a duty on employers to ensure the health and safety of employees only in so far as it is reasonably practical, the Health and Safety at Work etc Act 1974 s 2 (see PARA 421) does not contravene the United Kingdom's obligations under EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 5: Case C-127/05 *EC Commission v United Kingdom* [2007] All ER (EC) 986, [2007] ICR 1393, ECJ.
- 8 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 7.
- 9 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 8.
- 10 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 9.
- 11 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 10.
- 12 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 11.
- 13 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 12.
- 14 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 13.
- 15 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 14.
- 16 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 15.
- 17 Eg by (1) the Management of Health and Safety at Work Regulations 1992, SI 1992/2051 (revoked and replaced by the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 428 et seq); (2) the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (see PARA 733 et seq); (3) the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743 (see PARA 743); (4) the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513 (see PARA 451); (5) the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 623 et seq; (6) the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 623 et seq); (7) the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677 (see PARA 619 et seq); and (8) the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see PARA 660; and **FIRE SERVICES**). The above does not purport to be an exhaustive list.
- 18 See EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 16, Annex.
- 19 See eg:
  - 8 (1) EC Council Directive 89/654 (OJ L393, 30.12.1989, p 1) concerning the minimum safety and health requirements for the workplace (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
  - 9 (2) EC Council Directive 89/655 (OJ L393, 30.12.1989, p 13) concerning the minimum safety and health requirements for the use of work equipment by workers at work (amended by EC Council Directive 95/63 (OJ L335, 30.12.1995, p 28); European Parliament and EC Council Directive 2001/45 (OJ L195, 19.07.2001, p 46); and European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
  - 10 (3) EC Council Directive 89/656 (OJ L393, 30.12.1989, p 18) on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
  - 11 (4) EC Council Directive 90/269 (OJ L156, 21.06.1990, p 9) on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));

- 12 (5) EC Council Directive 90/270 (OJ L156, 21.06.1990, p 14) on the minimum safety and health requirements for work with display screen equipment (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 13 (6) EC Council Directive 90/394 (OJ L196, 26.07.1990, p 1) on the protection of workers from the risks related to exposure to carcinogens at work (amended by EC Council Directive 97/42 (OJ L179, 08.07.1997, p 4); and EC Council Directive 99/38 (OJ L138, 01.06.1999, p 66));
- 14 (7) EC Council Directive 92/57 (OJ L245, 26.08.1992, p 6) on the implementation of minimum safety and health requirements at temporary or mobile construction sites (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 15 (8) EC Council Directive 92/58 (OJ L245, 26.08.1992, p 23) on the minimum requirements for the provision of safety and/or health signs at work (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 16 (9) EC Council Directive 92/85 (OJ L348, 28.11.1992, p 1) to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 17 (10) EC Council Directive 93/103 (OJ L307, 13.12.1993, p 1) concerning the minimum safety and health requirements for work on board fishing vessels (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 18 (11) EC Council Directive 94/33 (OJ L216, 20.08.1994, p 12) on the protection of young people at work (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 19 (12) EC Council Directive 98/24 (OJ L131, 05.05.1998, p 11) on the protection of the health and safety of workers from the risks related to chemical agents at work (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 20 (13) European Parliament and Council Directive 99/92 (OJ L23, 28.01.2000, p 57) on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 21 (14) European Parliament and EC Council Directive 2000/54 (OJ L262, 17.10.2000, p 21) on the protection of workers from risks related to exposure to biological agents at work;
- 22 (15) European Parliament and EC Council Directive 2002/44 (OJ L177, 06.07.2002, p 13) on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21));
- 23 (16) European Parliament and EC Council Directive 2003/10 (OJ L42, 15.02.2003, p 38) on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.06.2007, p 21); and European Parliament and EC Council Regulation 1137/2008 (OJ L311, 21.11.2008, p 1)).

The above is not an exhaustive list.

20 Eg (1) EC Council Directive 89/654 is implemented by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (see PARA 456 et seq); (2) EC Council Directive 89/655 is implemented by the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306 (see PARA 482 et seq); (3) EC Council Directive 89/656 is implemented by the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966 (see PARA 523 et seq); (4) EC Council Directive 90/269 is implemented by the Manual Handling Operations Regulations 1992, SI 1992/2793 (see PARA 583); (5) EC Council Directive 90/270 is implemented by the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792 (see PARA 504 et seq); and (6) European Parliament and EC Council Directive 2002/44 is implemented by the Control of Vibration at Work Regulations 2005, SI 2005/1093 (amended by SI 2006/557) (see PARA 595).

## UPDATE

### 341 The framework directive and 'daughter' directives

NOTE 19--Head (2). Directive 89/655 replaced: European Parliament and EC Council Directive 2009/104 (OJ L260, 3.10.2009, p 5).

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### **342. Other European directives.**

There are a number of European directives, not falling within the provisions discussed in the previous paragraph, which relate to such matters as the classification, packaging and labelling of dangerous substances<sup>1</sup>, the control of major accident hazards<sup>2</sup>, the transport of dangerous goods<sup>3</sup>, the safety of machinery<sup>4</sup> and the protection of workers from the risks related to exposure to chemical, physical and biological agents at work<sup>5</sup>. The working time directive<sup>6</sup>, which concerns aspects of the organisation of working time, is discussed elsewhere in this work<sup>7</sup>.

1 See eg EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (amended by European Parliament and EC Council Regulation 1272/2008 (OJ L353, 31.12.2008, p 1)). As to the packaging and labelling of dangerous substances and preparations see PARA 572.

2 See eg EC Council Directive 96/82 (OJ L010, 14.01.1997, p 13) on the control of major-accident hazards involving dangerous substances. As to major accident hazards see PARA 662 et seq.

3 See eg EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13) on the inland transport of dangerous goods. As to the carriage of dangerous goods see **CARRIAGE AND CARRIERS**.

4 See eg EC Council Directive 89/392 (OJ L183, 29.06.1989, p 9). As to the supply of machinery and safety components see PARA 533 et seq.

5 See EC Council Directive 80/1107 (OJ L327, 03.12.1980, p 8); and see eg EC Council Directive 83/477 (OJ L263, 24.09.1983, p 25) on the protection of workers from the risks related to exposure to asbestos at work. As to the control of asbestos at work see PARA 630 et seq.

6 Ie European Parliament and EC Council Directive 2003/88 (OJ L299, 18.11.2003, p 9) concerning certain aspects of the organisation of working time (the 'working time directive').

7 See **EMPLOYMENT** vol 39 (2009) PARA 243 et seq.

## **UPDATE**

### **342 Other European directives**

NOTE 1--From 1 June 2015, Directive 67/548 is also repealed and replaced by Regulation 1272/2008: art 60. The new regulation comes into effect in phases starting 1 December 2010: for full transitional provisions see: art 61.

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### **(3) LEGISLATION RELATING TO PARTICULAR INDUSTRIES ETC**

#### **343. Safety in mines and quarries.**

Safety, health and welfare in mines<sup>1</sup> are regulated by the Mines and Quarries Acts 1954 and 1969<sup>2</sup> and subordinate legislation made under them and under the Health and Safety at Work etc Act 1974. The 1954 Act superseded earlier legislation in this field<sup>3</sup> and is itself being superseded by regulations made under the 1974 Act.

The Mines and Quarries Acts 1954 and 1969 apply, and apply only, to all mines, including those belonging to the Crown or a government department or held in trust for the Crown for the purposes of a government department<sup>4</sup>, and including training mines<sup>5</sup>.

Safety, health and welfare in quarries are regulated by the Quarries Regulations 1999<sup>6</sup>.

1 'Mine' means an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals: Mines and Quarries Act 1954 s 180(1) (substituted by SI 1993/1897); Mines and Quarries (Tips) Act 1969 s 1(3)(a). See further **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5. 'Minerals' includes stone, slate, clay, gravel, sand and other natural deposits except peat: Mines and Quarries Act 1954 s 182(1).

For the purposes of the Mines and Quarries Acts 1954 and 1969, so much of the surface (including buildings, structures and works) surrounding or adjacent to the shafts or outlets of the mine as is occupied with the mine for the purpose of, or in connection with, the working of the mine, the treatment, preparation for sale, consumption or use, storage or removal from the mine of the minerals or products gotten from it, or the removal of the refuse from it, is deemed to form part of the mine: Mines and Quarries Act 1954 s 180(3)(a), (6) (amended by SI 1999/2024). Premises in which a manufacturing process is carried on otherwise than for the purpose of working the mine or the preparation for sale of minerals gotten from it are not deemed to form part of the mine: Mines and Quarries Act 1954 s 180(3) proviso (as so amended). Premises used for the depositing of refuse from a single mine or quarry are deemed to form part of that mine if they are premises occupied exclusively by the owner of that mine (as to whom see PARA 395 note 5); and premises used for the depositing of refuse from two or more mines, if occupied by the owner of one of those mines, either exclusively or jointly with the owner of the other or any of the others, are deemed to form part of such one of those mines as the Health and Safety Executive may direct: s 180(4) (as so amended; also amended by virtue of SI 1974/2013).

A railway line serving a single mine which is neither deemed to form part of the mine under the Mines and Quarries Act 1954 s 180(3) nor a railway line belonging to a railway company is deemed to form part of the mine, and such a railway line jointly serving two or more mines is deemed to form part of such one of them as the Health and Safety Executive may direct: s 180(5) (as so amended). As to the Health and Safety Executive see PARA 361 et seq.

2 The Mines and Quarries Acts 1954 and 1969 comprise the Mines and Quarries Act 1954 and the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10): Mines and Quarries (Tips) Act 1969 s 38(2). Formerly, the relevant legislation consisted of the Mines and Quarries Acts 1954 to 1971, but the Mines Management Act 1971 was repealed by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 41(3).

3 Principally the Coal Mines Regulation Act 1887, the Quarries Act 1894, the Mines (Prohibition of Child Labour Underground) Act 1900, the Coal Mines Regulation Act 1908, the Coal Mines Acts 1911 and 1914 and the Coal Mines (Employment of Boys) Act 1937 (all now repealed). Without prejudice to the general statutory effect of repeals, any document referring to any Act or enactment so repealed is to be construed as referring to the Mines and Quarries Act 1954 or the corresponding enactment in that Act: s 191. The Act contains various savings in respect of the legislation it superseded. These are savings for (1) special regulations made under repealed enactments (s 191(1)(a), (2)); (2) certain rules made by the Mining Qualifications Board constituted under the Coal Mines Act 1911 (repealed) and support rules made under s 50 of that Act, and special rules

established under repealed enactments (Mines and Quarries Act 1954 s 191(1)(b), (d), (2)); (3) certain orders (with respect to fees, notification of accidents or the manner in which persons are to be searched) made under an enactment repealed by the Coal Mines Act 1911 (repealed) or by the Mines and Quarries Act 1954 (s 191(1)(c)); (4) certain certificates, exemptions, consents, approvals, permissions and authorities issued under any other enactment repealed by the Mines and Quarries Act 1954 (s 191(1)(e)); (5) certain inquiries and formal investigations uncompleted on 1 January 1957 (s 191(4)); (6) persons holding office under repealed enactments (s 191(5)); and (7) registers kept under repealed enactments (s 191(6)). The matters in heads (1)-(4) above if in effect at 1 January 1957 have effect in so far as they could have been made, issued, granted or done under the Mines and Quarries Act 1954 as if so made, issued, granted or done: s 191(1), (2).

Regulations, orders and rules were made to carry into effect the provisions of the Mines and Quarries Acts under those Acts: see the Mines and Quarries Act 1954 s 174 (as originally enacted); and the Mines and Quarries (Tips) Act 1969 s 1(3)(a). Regulations made under repealed provisions of the Mines and Quarries Acts 1954 to 1971 but continued in force by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 7(3) apply to all mines (eg the Mines and Quarries (Tips) Regulations 1971, SI 1971/1377: see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 545 et seq), to any class of mines (eg the Coal and Other Mines (Ventilation) Regulations 1956 (set out in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1) reg 1 (mines of coal, stratified ironstone, shale or fireclay: see PARA 791)) or to a particular mine (these are special regulations: see the Mines and Quarries Act 1954 s 141(5) (amended by SI 1974/2013)). Some grant exemptions from their provisions (eg the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 4; as to those regulations see PARA 765 et seq), or provide for the grant of exemption by the Health and Safety Executive (see eg the Coal and Other Mines (Ventilation) Regulations 1956 reg 20(3); and PARA 791) or by an authorised inspector (see eg the Coal and Other Mines (Locomotives) Regulations 1956 (set out in the Coal and Other Mines (Locomotives) Order 1956, SI 1956/1771, Sch 1) reg 35; and PARA 782). As to the Health and Safety Executive see PARA 361 et seq; and as to inspectors see PARA 375.

4 Mines and Quarries Act 1954 s 179 (amended by SI 1999/2024).

5 Mines and Quarries Act 1954 s 183. A 'training mine' is an excavation or series of excavations made for training purposes, ie for the purposes of instructing or training below ground persons in, or in any work connected with, mining minerals: Mines and Quarries Act 1954 s 183(1), (2). The Secretary of State may, however, by order direct that, in their application to any such premises which are used exclusively for training purposes, the Mines and Quarries Acts 1954 and 1969 are to have effect subject to such exceptions, adaptations and modifications as may be specified in the order: Mines and Quarries Act 1954 s 183(1). At the date at which this volume states the law, no such order had been made.

6 See the Quarries Regulations 1999, SI 1999/2024; and PARA 838 et seq.



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/1. THE LEGISLATION/(3) LEGISLATION RELATING TO PARTICULAR INDUSTRIES ETC/344. Safety in agriculture.

### **344. Safety in agriculture.**

Safety, health and welfare in agriculture<sup>1</sup> are regulated by the Agriculture (Safety, Health and Welfare Provisions) Act 1956<sup>2</sup>, and subordinate legislation<sup>3</sup> made both under it<sup>4</sup> and under the Health and Safety at Work etc Act 1974<sup>5</sup>. Regulations of general application may also apply to agriculture, with or without modifications<sup>6</sup>.

1 'Agriculture' includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or for other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not) and the use of land as grazing, meadow or pasture land or orchard, osier land or woodland or for market gardens or nursery grounds: Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 24(1). See generally **AGRICULTURAL PRODUCTION AND MARKETING**.

2 See PARA 747; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1246-1247.

3 See the Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034 (made under the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and continued in force by the Agricultural (Safety, Health and Welfare Provisions) Act 1956 (Repeals and Modifications) Regulations 1975, SI 1975/46, reg 5(3)); and PARA 745; and the Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262 (made under the Health and Safety at Work etc Act 1974); and PARA 746.

4 The Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 1 formerly permitted the making of regulations to secure the health, safety and welfare of persons engaged in agriculture. With the exception of s 1(6) (which provides that it is an offence to contravene any regulation made under the Act), s 1 was repealed by the Agriculture (Safety, Health and Welfare Provisions) Act 1956 (Repeals and Modifications) Regulations 1975, SI 1975/46, reg 2, Sch 1, but regulations made under the Act were continued in force by those Regulations: see note 3. The Act applies regulations made under it to the Crown: s 22. It does not extend to Northern Ireland: s 26(2).

5 As to the regulations made under the Health and Safety at Work etc Act 1974 see note 3.

6 See eg the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(4); and PARA 456.

Relevant general health and safety law compliance issues in agriculture are identified on a dedicated page of the Health and Safety Executive's internet site, accessible at the date at which this title states the law at [www.hse.gov.uk](http://www.hse.gov.uk). As to the Health and Safety Executive see PARA 361 et seq.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/1. THE LEGISLATION/(3) LEGISLATION RELATING TO PARTICULAR INDUSTRIES ETC/345. Safety in docks.

### **345. Safety in docks.**

Safety, health and welfare in docks are regulated principally by the provisions of the Docks Regulations 1988<sup>1</sup>. Regulations of general application may also apply to dock premises<sup>2</sup>, as may regulations specific to particular vessels or processes<sup>3</sup>.

1     Ie the Docks Regulations 1988, SI 1988/1655: see PARA 706 et seq.

2     See eg the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (which apply to docks premises, but not to ships within the meaning of the Docks Regulations 1988 SI 1988/1655: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(1)(a)); and PARA 456.

3     Eg the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656; see PARA 715.

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### **346. Safety in other industries and installations.**

Safety, health and welfare in a number of industries and installations are regulated by specific legislation, normally by health and safety regulations made under the Health and Safety at Work etc Act 1974<sup>1</sup>. Examples are the construction industry<sup>2</sup> and offshore installations<sup>3</sup>. The licensing etc of nuclear installations under the Nuclear Installations Act 1965 is dealt with elsewhere in this work<sup>4</sup>, as are the Railways Act 1993<sup>5</sup>, the Railways and Transport Safety Act 2003<sup>6</sup> and other railways legislation<sup>7</sup>.

1 As to health and safety regulations see PARA 424.

2 See eg the Construction (Design and Management) Regulations 2007, SI 2007/320; and PARA 683 et seq.

3 See eg the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738; and PARA 733 et seq.

4 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487 et seq.

5 As to the Railways Act 1993 s 117 see PARAS 302 note 12, 303 note 9, 349 note 8.

6 As to the Railways and Transport Safety Act 2003 s 105(1) see PARA 844.

7 See **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES**.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(1) EUROPEAN UNION BODIES/347. The European Commission and the Advisory Committee on Safety and Health at Work.

## **2. ADMINISTRATION**

### **(1) EUROPEAN UNION BODIES**

#### **347. The European Commission and the Advisory Committee on Safety and Health at Work.**

The European Commission's<sup>1</sup> general functions are:

- 55 (1) to ensure that the provisions of the EC Treaty and the measures taken by the institutions pursuant thereto are applied;
- 56 (2) to formulate recommendations or deliver opinions on matters dealt with in the Treaty, if it expressly so provides or if the Commission considers it necessary;
- 57 (3) to have its own power of decision and participate in the shaping of measures taken by the EC Council and by the European Parliament in the manner provided for in the Treaty; and
- 58 (4) to exercise the powers conferred on it by the EC Council for the implementation of the rules laid down by the latter<sup>2</sup>.

The EC Council and the EC Commission must consult each other and settle by common accord their methods of co-operation<sup>3</sup>. The Commission must publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community<sup>4</sup>. With respect to, inter alia, health and safety matters, the Commission must draw up a report each year on progress in achieving the specified objectives<sup>5</sup>, including the demographic situation in the Community. It must forward the report to the European Parliament, the Council and the Economic and Social Committee. The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation<sup>6</sup>.

By an EC Council Decision of 22 July 2003<sup>7</sup>, a new Advisory Committee on Safety and Health at Work was set up with effect from 1 January 2004 to replace two separate bodies, the Advisory Committee on Safety, Hygiene and Health Protection at Work<sup>8</sup> and the Mines Safety Commission<sup>9</sup>. The new Committee has the task of assisting the EC Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work and that task covers the public and the private sectors of the economy<sup>10</sup>. Specifically, the Committee is to:

- 59 (a) conduct, on the basis of the information available to it, exchanges of views and experience regarding existing or planned regulations;
- 60 (b) help to devise a common approach to problems in the fields of safety and health at work and identify Community priorities as well as the measures necessary for implementing them;
- 61 (c) draw the Commission's attention to areas in which there is an apparent need for new knowledge and for suitable training and research measures;
- 62 (d) define, within the framework of Community action programmes, the criteria and aims for preventing accidents at work and health hazards within the

- undertaking and methods enabling undertakings and their employees to evaluate and to improve the level of protection;
- 63 (e) contribute, alongside the European Agency for Safety and Health at Work<sup>11</sup>, to keeping national administrations, trades unions and employers' organisations informed of Community measures in order to facilitate co-operation and to encourage any initiatives on their part to exchange experience and establish codes of practice;
- 64 (f) give an opinion on plans for Community initiatives which affect safety and health at work;
- 65 (g) give an opinion on the annual programme and the rotating four-year programme of the European Agency for Safety and Health at Work<sup>12</sup>.

In order to accomplish the above tasks, the Committee is to co-operate with the other EC Committees which are competent for safety and health at work, inter alia with the Senior Labour Inspectors Committee and the Scientific Committee for Occupational Exposure Limits to Chemical Agents, mainly by exchanging information<sup>13</sup>.

1 As to membership of the EC Commission see the EC Treaty arts 213-216. The Commission must work under the political guidance of its President, who must decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality: art 217(1). As to allocation of responsibilities see art 217(2); as to vice-presidents see art 217(3); and as to the President's power to request that a member resigns see art 217(4). As to rules of procedure see art 218(2). The Commission acts by a majority of its members: see art 219. As to the citation of the EC treaty see PARA 340 note 1.

2 EC Treaty art 211. As to European health and safety legislation see PARAS 340-342.

3 EC Treaty art 218(1).

4 EC Treaty art 212.

5 I.e. the objectives of the EC Treaty art 136: see PARA 340.

6 EC Treaty art 143.

7 I.e. EC Council Decision (OJ C218, 13.09.2003, p 1) of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work.

8 The Advisory Committee on Safety, Hygiene and Health Protection at Work was set up by EC Council Decision 74/325 (OJ L185, 9.7.1974, p 15), which also set up a standing body for all economic activities, except for the extractive industries and the protection of the health of workers against the dangers arising from ionising radiation.

9 The Mines Safety Commission was set up by decisions taken by the representatives of the governments of the member states meeting within the Special Council of Ministers at the 36th and 42nd Council sessions of 6 September 1956 and 9 and 10 May 1957, the remit of which was established by the Decision of the Representatives of the governments of the member states meeting within the Special Council of Ministers of 9 July 1957 concerning the terms of reference and the rules of procedure of the Mines Safety Commission (OJ 57, 31.8.1957, p 487), and the responsibilities of which were extended by EC Council Decision 74/326 (OJ L185, 9.7.1974, p 18).

10 EC Council Decision of 22 July 2003 (OJ C 218, 13.09.2003, p 1) setting up an Advisory Committee on Safety and Health at Work art 2(1). As to membership of the Committee see arts 3-5; and as to procedure see arts 6-8.

11 As to the European Agency for Safety and Health at Work see PARA 348.

12 EC Council Decision of 22 July 2003 (OJ C 218, 13.09.2003, p 1) setting up an Advisory Committee on Safety and Health at Work art 2(2).

13 EC Council Decision of 22 July 2003 (OJ C 218, 13.09.2003, p 1) setting up an Advisory Committee on Safety and Health at Work art 2(3).



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### **348. The European Agency for Safety and Health at Work.**

The European Agency for Safety and Health at Work was established by an EC Council Regulation of 18 July 1994<sup>1</sup>, which was amended in 1995, 2003 and 2005<sup>2</sup>. The Agency, which is based in Bilbao, Spain, is a tripartite European Union organisation. It has no legislative or executive powers with regard to the European Union; rather, its aim is to provide the Community bodies, the member states, the social partners and those involved in the field with technical, scientific and economic information of use in the field of safety and health at work<sup>3</sup>. For the purpose of achieving that aim, the Agency's role is to:

- 66 (1) collect, analyse and disseminate technical, scientific and economic information in the member states in order to pass it on to the Community bodies, member states and interested parties; this collection is to take place to identify risks and good practices as well as existing national priorities and programmes and provide the necessary input to the priorities and programmes of the Community;
- 67 (2) collect and analyse technical, scientific and economic information on research into safety and health at work and on other research activities which involve aspects connected with safety and health at work and disseminate the results of the research and research activities;
- 68 (3) promote and support co-operation and exchange of information and experience amongst the member states in the field of safety and health at work, including information on training programmes;
- 69 (4) organise conferences and seminars and exchanges of experts from the member states in the field of safety and health at work;
- 70 (5) supply the Community bodies and the member states with the objective available technical, scientific and economic information they require to formulate and implement judicious and effective policies designed to protect the safety and health of workers and, to that end, provide the Commission in particular with the technical, scientific and economic information it requires to fulfil its tasks of identifying, preparing and evaluating legislation and measures in the area of the protection of the safety and health of workers, notably as regards the impact of legislation on enterprises, with particular reference to small and medium-sized enterprises;
- 71 (6) establish, in co-operation with the member states, and co-ordinate a network comprising the main component elements of the national information networks, the national focal points and any future topic centres<sup>4</sup>, taking into account the national, Community and international bodies and organisations which provide this type of information and services;
- 72 (7) collect and make available information on safety and health matters from and to third countries and international organisations<sup>5</sup>;
- 73 (8) provide technical, scientific and economic information on methods and tools for implementing preventive activities, identify good practices<sup>6</sup> and promote preventive actions, paying particular attention to the specific problems of small and medium-sized enterprises;
- 74 (9) contribute to the development of Community strategies and action programmes relating to the protection of safety and health at work, without prejudice to the Commission's sphere of competence<sup>7</sup>.

The Agency must work as closely as possible with the existing institutions, foundations, specialist bodies and programmes at Community level in order to avoid any duplication. In particular, the Agency must ensure appropriate cooperation with the European Foundation for the Improvement of Living and Working Conditions, without prejudice to its own aims<sup>8</sup>.

Provision is made for public access to Agency documents<sup>9</sup>.

The Agency maintains an internet site on the World Wide Web where full details of its organisation, work and publications may be obtained<sup>10</sup>.

1 EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1).

2 It is amended by EC Council Regulation 1643/95 (OJ L156, 07.07.1995, p 1); EC Council Regulation 1654/2003 (OJ L245, 29.09.2003, p 38); and EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4); and by the Act of Accession (2003) (OJ L236, 23.09.2003, p 33).

3 See EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 2 (substituted by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)). As to the annual work programme of the Agency see EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 10 (amended by EC Council Regulation 1654/2003 (OJ L245, 29.09.2003, p 38); and EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)); as to the budget see EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) arts 12-14 (arts 13, 14 substituted by EC Council Regulation 1654/2003 (OJ L245, 29.09.2003, p 38); and amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)); and as to internal financial provisions see EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 15 (substituted by EC Council Regulation 1654/2003 (OJ L245, 29.09.2003, p 38); and amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)). As to language arrangements and translation services see EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) arts 17-18; as to staff see art 20 (amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

The Agency has legal personality and enjoys in all the member states the most extensive legal capacity accorded to legal persons under their laws: EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 7. The Protocol on the Privileges and Immunities of the European Communities applies to the Agency: art 19. As to contractual liability and non-contractual liability of the Agency and its staff see arts 21, 22 (art 22 amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

4 See EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) arts 4, 5 (amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)). As to the Governing Board, the Bureau and the Director see EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) arts 7a, 8, 9, 11 (art 7a added, art 8 substituted and arts 9, 11 amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

5 Eg the World Health Organisation, the International Labour Organisation, etc.

6 With regard to good practices, the Agency should in particular focus on practices which constitute practical tools to be used in drawing up an assessment of the risks to safety and health at work, and identifying the measures to be taken to tackle them: EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 3(1)(h) (substituted by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

7 EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 3(1) (amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)). The Agency must ensure that the information disseminated is comprehensible to the end users. To achieve this objective, the Agency must work closely with the national focal points referred to in EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 4(1), in accordance with the provisions of art 4(2): art 3(1)(j) (added by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

8 EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 3(2) (substituted by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

9 See EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 6 (substituted by EC Council Regulation 1654/2003 (OJ L245, 29.09.2003, p 38) and amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)). Members of the Governing Board, the Director, the staff and all other persons participating in the activities of the Agency are required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy: EC Council Regulation 2062/94 (OJ L216, 20.08.1994, p 1) art 16 (amended by EC Council Regulation 1112/2005 (OJ L184, 15.07.2005, p 4)).

10 At the date at which this title states the law, the Agency's internet site was accessible at <http://osha.europa.eu/en>.



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(2) THE SECRETARY OF STATE/(i) Functions and Powers under the Health and Safety at Work etc Act 1974/349. General functions.

## **(2) THE SECRETARY OF STATE**

### **(i) Functions and Powers under the Health and Safety at Work etc Act 1974**

#### **349. General functions.**

The administration of the Health and Safety at Work etc Act 1974 is principally the responsibility of the Secretary of State<sup>1</sup>.

The Secretary of State appoints, and may remove, the chair and members of the Health and Safety Executive<sup>2</sup>. The Executive is under his control<sup>3</sup> and it is his duty to remunerate it<sup>4</sup>. His consent is required both to the Executive's approval of codes of practice<sup>5</sup> and to the withdrawal of such approval<sup>6</sup>. The Secretary of State has power to make health and safety regulations for the general purposes<sup>7</sup> of the Act<sup>8</sup>. Appeals in connection with licensing provisions are determined by him or on his behalf<sup>9</sup>. He has power to compel the performance by local authorities of their enforcement functions<sup>10</sup>, and he is responsible for the maintenance of the Employment Medical Advisory Service<sup>11</sup>.

The functions and powers of the Secretary of State under the Health and Safety at Work etc Act 1974 have not been devolved, in relation to Wales, to the Welsh Ministers<sup>12</sup>.

1 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355 et seq; and as to the general functions of the Secretary of State in respect of the Factories Act 1961 see PARA 355. At the date at which this title states the law, the Secretary of State responsible for the administration of the Health and Safety at Work etc Act 1974 in practice was primarily the Secretary of State for Work and Pensions, but other Secretaries of State and ministers had health and safety responsibilities, eg the Secretary of State for Business, Enterprise and Regulatory Reform with respect to making regulations under the European Communities Act 1972 s 2(2) in relation to machinery, the ministers in the Department of the Environment, Food and Rural Affairs with respect to agriculture, ministers in the Department for Communities and Local Government and the Welsh Ministers with respect to fire safety, and the Secretary of State for Transport with respect to railways. For current responsibilities see the most recent edition of the Civil Service Yearbook.

2 See the Health and Safety at Work etc Act 1974 Sch 2 paras 2, 5 (substituted by SI 2008/960); and PARA 361.

3 See the Health and Safety at Work etc Act 1974 s 12 (substituted by SI 2008/960); and PARA 366.

4 See the Health and Safety at Work etc Act 1974 s 43(1) (amended by SI 2008/960); and PARA 354.

5 See the Health and Safety at Work etc Act 1974 s 16(2) (amended by SI 2008/960); and PARA 426 note 5.

6 See the Health and Safety at Work etc Act 1974 s 16(5) (amended by SI 2008/960); and PARA 426.

7 Ie for the general purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54): see PARA 303. Regulations or codes must be designed to maintain or improve the standards of health, safety and welfare established under the enactments referred to in the Health and Safety at Work etc Act 1974 s 1(2), Sch 1 (see PARA 302 note 12); s 1(2) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15, para 1, Sch 18). As to other regulations which the Secretary of State may make see eg the Health and Safety at Work etc Act 1974 s 14(3) (regulations relating to inquiries: see PARA 398), s 18(2) (regulations relating to enforcement: see PARA 372), s 20(3) (regulations relating to the taking of samples: see PARA 376 note 16), s 43(2) (regulations providing for the remuneration of authorities: see PARA 354), s 49 (regulations providing for metrification: see PARA 353), s 52(2) (regulations extending the meanings of 'work' and 'at work' for the purposes of Pt I: see PARA

302 note 1), s 80 (regulations repealing or modifying existing legislation: see PARA 350), s 85(2) (regulations bringing the Act into force: see PARA 302 note 2).

8 Health and Safety at Work etc Act 1974 s 15(1) (substituted by the Employment Protection Act 1975 s 116, Sch 15 para 6; and amended by SI 2002/794); and see PARA 424. The power to repeal or modify existing statutory provisions, and the provisions of the Health and Safety at Work etc Act 1974 relating to the preparation and approval of codes of practice (see s 16; and PARA 426) supply the means whereby the progressive replacement of the existing statutory provisions is to be achieved as contemplated by the Health and Safety at Work etc Act 1974 s 1(2) for the purposes of maintaining or improving the standards of health, safety and welfare established under the enactments specified in Sch 1 col 3 (see PARA 302 text and note 12).

Without prejudice to the generality of s 15(1), regulations under s 15 may repeal or modify any of the provisions mentioned in the Railways Act 1993 s 117(4) (see PARA 302 note 12) and may make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any enactment there mentioned: s 117(3).

9 See the Health and Safety at Work etc Act 1974 s 44; and PARA 351.

10 See the Health and Safety at Work etc Act 1974 s 45; and PARA 352.

11 See the Health and Safety at Work etc Act 1974 s 55(2); and PARA 384 et seq.

12 However, the Executive works closely with the Welsh Ministers (as to whom see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**).

As to the Concordat made between the Health and Safety Executive and the National Assembly for Wales see PARA 370. See also the Concordat between Bodies Inspecting, Regulating and Auditing Health and Social Care in Wales (2005), to which the Executive is a signatory; accessible online through the Executive's website at [www.hse.gov.uk](http://www.hse.gov.uk).

## **UPDATE**

### **349 General functions**

NOTE 1--The Secretary of State for Business, Enterprise and Regulatory Reform has been redesignated as the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

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### **350. Subordinate legislation.**

Any power to make regulations conferred by Part I or Part II of the Health and Safety at Work etc Act 1974<sup>1</sup> is exercisable by statutory instrument subject, with one exception<sup>2</sup>, to annulment in pursuance of a resolution of either House of Parliament<sup>3</sup>, and includes power to make different provision by the regulations for different circumstances or cases and to include in the regulations such incidental, supplemental and transitional provisions as the authority making the regulations considers appropriate in connection with them<sup>4</sup>.

Where any power to make regulations under any of the relevant statutory provisions<sup>5</sup> is exercisable by the Secretary of State<sup>6</sup> that power may be exercised either so as to give effect with or without modifications<sup>7</sup> to proposals for the making of regulations under that power submitted to him by the Health and Safety Executive<sup>8</sup> or independently of any such proposals<sup>9</sup>, but he must not make any regulations independently of any such proposals unless he has consulted the Executive and such other bodies as appear to him to be appropriate<sup>10</sup>.

After consulting such bodies as appear to be appropriate, the Secretary of State may by regulation repeal or modify<sup>11</sup> certain statutory provisions<sup>12</sup>, not being among the relevant statutory provisions<sup>13</sup>, if it appears to be expedient in consequence of or in connection with any provision made by or under Part I of the Health and Safety at Work etc Act 1974<sup>14</sup>. The provisions which may be repealed or modified include (1) any provision contained in the 1974 Act or in any other Act<sup>15</sup> passed before or in the same session as that Act<sup>16</sup>; (2) any provision contained in any regulations, order or other instrument of a legislative character made under an Act before the passing of the 1974 Act<sup>17</sup>; (3) any provision which applies, excludes or for any other purpose refers to any of the relevant statutory provisions and is contained in any Act not included in the provisions<sup>18</sup> to which reference has previously been made<sup>19</sup>; and (4) provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996 which derive from provisions of the Employment Protection (Consolidation) Act 1978 which re-enacted provisions previously contained in the Redundancy Payments Act 1965, the Contracts of Employment Act 1972 and the Trade Unions and Labour Relations Act 1974<sup>20</sup>.

1    le any power conferred by the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), Pt II (ss 55-60).

2    le unless the Health and Safety at Work etc Act 1974 s 82(4) applies. The first regulations under s 43A(1) (regulations requiring persons who provide railway services to pay railway safety levy: see PARA 844) are not to be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 82(4) (added, and s 82(3)(b) amended, by the Railways and Transport Safety Act 2003 s 105(3)).

3    Health and Safety at Work etc Act 1974 s 82(3)(b) (as amended: see note 2). As to the making of statutory instruments generally see the Statutory Instruments Act 1946; and **STATUTES** vol 44(1) (Reissue) PARA 1499 et seq.

4    Health and Safety at Work etc Act 1974 s 82(3)(a).

5    As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

6    As to the Secretary of State see PARA 349.

7    'Modifications' includes additions, omissions and amendments, and related expressions must be construed accordingly: Health and Safety at Work etc Act 1974 s 82(1)(c). Where the authority who or which is to exercise power proposes to give effect to modified proposals he or it must consult the Health and Safety Executive

before making the regulations: see s 50(2) (amended by the Employment Protection Act 1975 s 116, Sch 15 para 16(2); and by SI 2008/960). As to the Executive see PARA 361 et seq.

8 le under the Health and Safety at Work etc Act 1974 s 11(3): see PARA 367.

Where the Executive proposes to submit a proposal under s 11(3) (except proposals for the making of regulations under s 43(2), as to which see PARA 354), it must first consult (1) any government department or other body that appears to it to be appropriate (and, in particular, in the case of proposals for the making of regulations relating to enforcement under s 18(2) (see PARA 372), any body representing local authorities that so appears, and, in the case of proposals for the making of regulations relating to electro-magnetic radiations, the Health Protection Agency); and (2) such government departments and other bodies, if any, as, in relation to any matter dealt with in the proposals, it is required to consult by virtue of directions given to it by the Secretary of State: s 50(3) (amended by the Employment Protection Act 1975 Sch 15 para 16(3); the Health Protection Agency Act 2004 s 11(1), Sch 3 para 5(1), (3); and SI 2008/960).

9 Health and Safety at Work etc Act 1974 s 50(1) (substituted by SI 2008/960). The Health and Safety at Work etc Act 1974 s 50(1) does not apply to the exercise of a power to make regulations so far as it is exercised (1) for giving effect (with or without modifications) to proposals submitted by the Office of Rail Regulation under the Railways Act 2005 Sch 3 para 2(5) (as to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 197); or (2) otherwise for or in connection with the railway safety purposes: Health and Safety at Work etc Act 1974 s 50(1A) (added by the Railways Act 2005 s 2, Sch 3 para 13). 'Railway safety purposes' has the same meaning as in the Railways Act 2005 Sch 3 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 196): Health and Safety at Work etc Act 1974 s 53(1) (definition added by the Railways Act 2005 Sch 3 para 15(3)). As to the power of the Secretary of State to make regulations see PARA 349 text and notes 7-8.

10 Health and Safety at Work etc Act 1974 s 50(1AA) (added by SI 2008/960).

11 Such modifications include those relating to the enforcement of provisions to which the Health and Safety at Work etc Act 1974 s 80 applies, including the appointment of persons for the purpose of such enforcement and the powers of persons so appointed: s 80(3). As to the meaning of 'modifications' see note 7.

12 See the text and notes 15-18.

13 See note 5; and the Health and Safety at Work etc Act 1974 s 80(5) (substituted by the Employment Protection Act 1975 Sch 15 para 19).

14 Health and Safety at Work etc Act 1974 s 80(1), (4) (s 80(4) substituted by the Employment Protection Act 1975 Sch 15 para 19; and amended by SI 2002/794). As to the purposes of the Health and Safety at Work etc Act 1974 Pt I see PARA 303.

15 'Act' includes a provisional order confirmed by an Act (Health and Safety at Work etc Act 1974 s 82(1)(a)) and, except in so far as the context otherwise requires, any reference to an enactment is a reference to it as amended, and includes a reference to it as applied by or under any other enactment, including the Health and Safety at Work etc Act 1974 (s 82(2)).

16 Health and Safety at Work etc Act 1974 s 80(2)(a).

17 Health and Safety at Work etc Act 1974 s 80(2)(b).

18 le the provisions of the Health and Safety at Work etc Act 1974 s 80(2)(a), (b) (see the text to notes 16-17).

19 Health and Safety at Work etc Act 1974 s 80(2)(c).

20 Health and Safety at Work etc Act 1974 s 80(2A) (added by the Employment Protection (Consolidation) Act 1978 s 159 (2), Sch 16 para 17; and amended by the Employment Rights Act 1996 s 240, Sch 1 para 5).

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### **351. Appeals.**

Any person who is aggrieved<sup>1</sup> by a decision of an authority having power to issue licences (other than nuclear site licences)<sup>2</sup> under any of the relevant statutory provisions<sup>3</sup> (1) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another; (2) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved; (3) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or (4) revoking a licence held by him, may appeal to the Secretary of State<sup>4</sup>.

In such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, the Secretary of State may direct that the appeal be determined on his behalf by a person appointed by him for that purpose<sup>5</sup>. Before the determination of an appeal the Secretary of State must ask the appellant and the authority against whose decision the appeal is brought whether they wish to appear and be heard on the appeal<sup>6</sup>. If they both express a wish not to appear and be heard the appeal may be determined without a hearing<sup>7</sup>, but if either party expresses a wish to appear and be heard the Secretary of State must afford to both of them an opportunity of doing so<sup>8</sup>.

Except as otherwise provided in the relevant rules<sup>9</sup>, the procedure at the hearing is to be such as the appointed person in his discretion determines and the appointed person must state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, he proposes to adopt, and must inform the parties what he proposes as regards any site inspection arising out of the hearing<sup>10</sup>. Where the appointed person has been directed to determine the appeal on behalf of the Secretary of State and, after the close of the hearing, proposes to take into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy or a matter affecting the safety of the state) which was not raised at the hearing and which he considers to be material to his decision, he may not come to a decision without first notifying the parties of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within that time for the re-opening of the hearing<sup>11</sup>.

A person determining an appeal on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination<sup>12</sup>.

After the close of the hearing, unless the Secretary of State has directed the appointed person to determine the appeal on his behalf, the appointed person must prepare the first part of his report comprising a summary of the evidence given at the hearing together with his findings of fact, and (a) must provide a copy of the first part of his report to the parties and to any person who appeared at the hearing, if so required by any of them; (b) must consider any comments received by him from either party or from any such person within 14 days from the furnishing of the first part of his report; (c) may, after consulting the other party or persons, amend the first part of his report, so however that he must not, except with the consent of both parties and all such persons, introduce into his report any matter that had not been raised at the hearing<sup>13</sup>. The appointed person must thereafter prepare the second part of his report and must include therein his recommendations if any or his reason for not making any recommendation; and must then send his report to the Secretary of State<sup>14</sup>. Where the Secretary of State on

receipt of the appointed person's report so made differs from the appointed person on a finding of fact or, after the close of the hearing, takes into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy or a matter affecting the safety of the state) which was not raised at the hearing, and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he may not come to a decision which is at variance with any such recommendation without first notifying the parties of the terms of the recommendation, of his disagreement with it and of the reasons (other than reasons of which the disclosure might in his opinion affect the safety of the state) for his disagreement with it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has taken into consideration any new evidence or any new issue of fact, not being a matter of government policy or a matter affecting the safety of the State) of asking within 21 days for the re-opening of the hearing<sup>15</sup>.

The Secretary of State or the appointed person (if the Secretary of State has directed the appointed person to determine the appeal on his behalf) must notify the decision on the appeal, and the reasons therefore, in writing to the parties and to any person who, having appeared at the hearing, has asked to be notified of the decision<sup>16</sup>.

1 As to the meaning of 'aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

2 'Licence' means a licence under any of the relevant statutory provisions (as to which see PARA 302 note 24) other than a nuclear site licence: Health and Safety at Work etc Act 1974 s 44(7)(a) (amended by the Employment Protection Act 1975 s 116, Sch 15 para 13). 'Nuclear site licence' means a licence to use a site for the purpose of installing or operating a nuclear installation within the meaning of the Health and Safety at Work etc Act 1974 s 44(8): s 44(7)(b). As to nuclear site licences see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487 et seq.

3 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

4 Health and Safety at Work etc Act 1974 s 44(1)(a)-(d) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 13, Sch 18). As to the Secretary of State see PARA 349. The procedure to be followed is prescribed by the Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, which apply to hearings held in England or Wales in pursuance of the Health and Safety at Work etc Act 1974 s 44(3) on appeals brought under s 44 (Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 3); and see the text and notes 8-16.

5 Health and Safety at Work etc Act 1974 s 44(2). The Tribunals and Inquiries Act 1992 applies to a hearing by a person so appointed as it applies to a statutory inquiry held by the Secretary of State, but as if in s 10(1) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person: Health and Safety at Work etc Act 1974 s 44(4) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 9). A hearing held by a person appointed in pursuance of the Health and Safety at Work etc Act 1974 s 44(2) is a statutory inquiry for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 44, Sch 7 (functions etc of Administrative Justice and Tribunals Council): Health and Safety at Work etc Act 1974 s 44(4A) (added by the Tribunals, Courts and Enforcement Act 2007 s 48(1), Sch 8 para 3). See further **ADMINISTRATIVE LAW**.

The Secretary of State may pay to any person appointed to hear or determine an appeal on his behalf such remuneration and allowances as, with the approval of the Treasury, he may determine: Health and Safety at Work etc Act 1974 s 44(6); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670.

6 Health and Safety at Work etc Act 1974 s 44(3).

7 Health and Safety at Work etc Act 1974 s 44(3)(a).

8 Health and Safety at Work etc Act 1974 s 44(3)(b). A date, time and place for the holding of the hearing must be fixed and may be varied by the Secretary of State, who must give not less than 42 days' notice in writing of such date, time and place to the parties, provided that (1) with the consent of the parties, the Secretary of State may give such lesser period of notice as is to be agreed with the parties and in that event he may specify a date for service of the statement referred to in the Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 5(1) later than the date therein prescribed; (2) where it becomes necessary or advisable to vary the time or place fixed for the hearing, the Secretary of State must give such notice of the variation as may appear to him to be reasonable in the circumstances: r 4(1). The notice so given must state the name of the appointed person and whether or not he is to determine the appeal on behalf of the

Secretary of State: r 4(2). Without prejudice to the foregoing provisions of r 4, the Secretary of State may require the licensing authority to take one or more of the following steps, namely: (a) to publish in one or more newspapers circulating in the locality in which the site is situated such notice of the hearing and in such form as he may direct; (b) to serve such notice of the hearing, in such form and on such persons or classes of persons as he may direct; (c) to give such other notice of the hearing and in such form as he may direct, and the requirements as to the period of notice contained in r 4(1) do not apply to any such notices: r 4(3). Notices or documents required or authorised to be served or sent under the provisions of any of the 1974 rules may be sent by post: r 13.

Not later than 28 days before the date of the hearing (or such later date as the Secretary of State may specify under r 4(1) proviso (i) (see head (1) above)), the licensing authority must serve on the appellant a written statement of any submission which the licensing authority proposes to put forward at the hearing and must supply a copy of the statement to the Secretary of State for transmission to the appointed person: r 5(1). Where a government department has expressed in writing to the licensing authority a view in support of the decision of the licensing authority and the licensing authority proposes to rely on such expression of view in its submissions at the hearing, it must include it in its statement and must supply a copy of the statement to the government department concerned: r 5(2). Where the licensing authority intends to refer to or put in evidence at the hearing, documents (including photographs, maps and plans), the authority's statement must be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by the appellant; and the licensing authority must afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of the documents: r 5(3). The appellant must, if so required by the Secretary of State, serve on the licensing authority and on the Secretary of State for transmission to the appointed person, within such time before the hearing as the Secretary of State may specify, a written statement of the submissions which he proposes to put forward at the hearing; and such statement must be accompanied by a list of any documents (including photographs, maps and plans) which the appellant intends to refer to or put in evidence at the hearing; and must also afford the licensing authority a reasonable opportunity to inspect and, where practicable, to take copies of such documents as are referred to above: r 5(4).

The parties are entitled to appear at the hearing: r 6(1). Any other person may appear at the discretion of the appointed person provided that he has, not later than seven days before the date of the hearing, served on the licensing authority a statement of his proposed submissions; and the licensing authority must send a copy of any such statement duly served on it to the appointed person and to the appellant: r 6(2). A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person: r 6(3). Where there are two or more persons having a similar interest in the subject matter of the hearing, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested: r 6(4). Where a government department has expressed in writing to the licensing authority a view in support of the decision of the licensing authority and the licensing authority has included this view in the statement referred to in r 5(1), the appellant may, not later than 14 days before the date of the hearing, apply in writing to the Secretary of State for a representative of the government department concerned to be made available at the hearing: r 7(1). The Secretary of State must transmit any application so made to him to the government department concerned, who must make a representative of the department available to attend the hearing: r 7(2). A representative of a government department who, in pursuance of this rule, attends a hearing must be called as a witness by the licensing authority and must state the reasons for the view expressed by his department and included in the authority's statement under r 5(1) and must give evidence and be subject to cross-examination to the same extent as any other witness; but nothing in this provision requires a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy or to matters which affect the safety of the State and the appointed person must disallow any such question: r 7(3), (4).

#### 9 le in the Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040.

10 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 8(1). Unless in any particular case the appointed person with the consent of the appellant otherwise determines, the appellant must begin and has the right of final reply: r 8(2). The parties are entitled to make an opening statement, to call evidence and to cross-examine persons giving evidence, but any other person appearing at the hearing may do so only to the extent permitted by the appointed person: r 8(3). The appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest; but, save as aforesaid, any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded him to take or obtain copies thereof: r 8(4). The appointed person may allow the licensing authority or the appellant, or both of them, to alter or add to the submissions contained in any statement, served under r 5(1) or (4), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but must (if necessary by adjourning the hearing) give the appellant or the licensing authority, as the case may be, an adequate opportunity of considering any such fresh submission or document: r 8(5). If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing at his discretion: r 8(6). The appointed person is entitled (subject to disclosure thereof at the hearing) to take into

account any written representations or statements received by him before the hearing from any person: r 8(7). The appointed person may from time to time adjourn the hearing, and where he does so, must give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing, provided that where the date, time and place of the adjourned hearing are announced at the hearing, no further notice is to be required: r 8(8).

The appointed person may make an inspection of the site before or during the hearing after having given notice to the parties of the date and time at which he proposes to do so: r 9(1). The appointed person may, and must if so requested by any party before or during the hearing, inspect the premises after the close of the hearing and must, in all cases where he intends to make such an inspection, announce during the hearing the date and time at which he proposes to do so: r 9(2). The parties are entitled to accompany the appointed person on any inspection under r 9; but the appointed person is not bound to defer his inspection if any person entitled to accompany him is not present at the time appointed: r 9(3).

11 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 10(1). The appointed person may in any case, if he thinks fit, cause the hearing to be re-opened and must cause it to be re-opened if asked to do so in accordance with r 10(1); and if the hearing is re-opened, the provisions of r 4(1) and (3) apply as they applied to the original hearing with the substitution in r 4(1) of '28' for '42', and with the substitution for references to the Secretary of State, wherever they occur, of references to the appointed person: r 10(2).

12 Health and Safety at Work etc Act 1974 s 44(5).

13 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040. r 11(1)(a).

14 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 11(1)(b), (c).

15 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 11(2). The Secretary of State may in any case, if he thinks fit, cause the hearing to be re-opened, and must cause it to be re-opened if asked to do so in accordance with r 11(2); and, if the hearing is re-opened, the provisions of r 4(1) and (3) apply as they applied to the original hearing with the substitution in r 4(1) of '28' for '42': r 11(3).

16 Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, r 12(1). Where a report has been made by the appointed person under r 11(1) and a copy of that report is not sent with the notification of the decision, the notification must be accompanied by a summary of the appointed person's conclusions and recommendations: r 12(2). Where a report has been made by the appointed person under r 11(1) and any person entitled to be notified of the decision on the appeal under r 12(1) has not received a copy of that report, he must be supplied with a copy thereof on written application made to the Secretary of State within one month from the date of such decision: r 12(3). For these purposes, 'report' does not include documents, photographs or plans appended to the report: r 12(4).



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### **352. Default powers.**

Where, in the case of a local authority<sup>1</sup> which is an enforcing authority<sup>2</sup>, the Health and Safety Executive<sup>3</sup> is of the opinion that an investigation should be made as to whether the local authority has failed to perform any of its enforcement functions<sup>4</sup>, the Executive may make a report to the Secretary of State<sup>5</sup>, who may, after considering it, cause a local inquiry to be held<sup>6</sup>. If the Secretary of State is afterwards satisfied that a local authority has failed to perform any of its enforcement functions, he may make an order<sup>7</sup> declaring it to be in default<sup>8</sup>.

Such an order may, for the purpose of remedying the default, direct the defaulting authority to perform such of its enforcement functions as are specified in the order in such manner as may be so specified, and may specify the time or times within which those functions are to be performed by the authority<sup>9</sup>.

If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order<sup>10</sup>, make an order transferring to the Health and Safety Executive such of the enforcement functions of the defaulting authority as he thinks fit<sup>11</sup>. Such an order may provide for the transfer to the Executive of such of the rights, liabilities and obligations of the authority as the Secretary of State considers appropriate; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to any rights, liabilities and obligations held by the Executive for the purposes of the transferred enforcement functions<sup>12</sup>.

1 As to the meaning of 'local authority' see PARA 305 note 3.

2 'Enforcing authority' means the Health and Safety Executive or any other authority which is by any of the relevant statutory provisions (see PARA 302 note 24) or by regulations made under the Health and Safety at Work etc Act 1974 s 18(2) (see PARA 372) made responsible for the enforcement of any of those provisions to any extent: Health and Safety at Work etc Act 1974 ss 18(7)(a), 53(1). This definition is applied for the purposes of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see PARAS 367, 370, 372): see reg 2(1).

3 As to the Health and Safety Executive see PARA 361 et seq.

4 In relation to a local authority, 'enforcement functions' means the functions of the authority as an enforcing authority: Health and Safety at Work etc Act 1974 s 45(11).

5 Health and Safety at Work etc Act 1974 s 45(1) (amended by SI 2008/960). As to the Secretary of State see PARA 349.

6 Health and Safety at Work etc Act 1974 s 45(2). The provisions of the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply, without prejudice to the generality of s 250(1), to such a local inquiry: Health and Safety at Work etc Act 1974 s 45(2).

7 The Secretary of State may by order vary or revoke any order previously made by him pursuant to the Health and Safety at Work etc Act 1974 s 45: s 45(10). As to enforcement of the order see the text and notes 10-11.

8 Health and Safety at Work etc Act 1974 s 45(3).

9 Health and Safety at Work etc Act 1974 s 45(4).

10 le by a mandatory order.

11 Health and Safety at Work etc Act 1974 s 45(5) (amended by virtue of SI 2004/1033). In such case, the amount of any expenses which the Executive certifies were incurred by it in performing those functions must on demand be paid to it by the defaulting authority (Health and Safety at Work etc Act 1974 s 45(6)), and such expenses must be defrayed and debited by the authority as if the enforcement functions had not been transferred and the expenses had been incurred by it in performing them (s 45(7)). It may raise the necessary money for the expenses by the use of the powers it would have had to raise the money required for defraying expenses incurred for the purpose of the enforcement functions in question: s 45(8). See also s 45(10), cited in note 7.

12 Health and Safety at Work etc Act 1974 s 45(9).

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### **353. Metrication.**

The Secretary of State by regulations<sup>1</sup> may amend<sup>2</sup> certain provisions<sup>3</sup> by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the regulations for an amount or quantity expressed in metric units of a different description<sup>4</sup>. The provisions which may be so amended are (1) any of the relevant statutory provisions<sup>5</sup>; (2) any provision of an enactment which relates to any matter relevant to any of the general purposes of Part I of the Health and Safety at Work etc Act 1974 but is not among the relevant statutory provisions<sup>6</sup>; or (3) any provision of an instrument made or having effect under any enactment so relating<sup>7</sup>. The amendments must be such as to preserve the effect of such provisions except to such extent as in the opinion of the authority making the regulations is necessary to obtain amounts expressed in convenient and suitable terms<sup>8</sup>.

A number of such regulations have been made<sup>9</sup>.

<sup>1</sup> See the Health and Safety at Work etc Act 1974 s 49(4) (substituted by the Employment Protection Act 1975 s 116, Sch 15 para 15(2); and amended by SI 2002/794). As to the Secretary of State see PARA 349.

<sup>2</sup> In the case of a provision which contains words which refer to units other than metric units, the regulations may repeal the words if the authority making the regulations is of the opinion that they could be omitted without altering the effect of the provision: Health and Safety at Work etc Act 1974 s 49(3) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 15(1), Sch 18).

<sup>3</sup> See the text to notes 5-7.

<sup>4</sup> Health and Safety at Work etc Act 1974 s 49(1) (amended by the Employment Protection Act 1975 Sch 15 para 15(1)).

<sup>5</sup> Health and Safety at Work etc Act 1974 s 49(1)(a). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

<sup>6</sup> Health and Safety at Work etc Act 1974 s 49(1)(b). As to the general purposes of Pt I (ss 1-54) see PARA 303.

<sup>7</sup> Health and Safety at Work etc Act 1974 s 49(1)(c).

<sup>8</sup> Health and Safety at Work etc Act 1974 s 49(2) (as amended: see note 4).

<sup>9</sup> See eg the Mines and Quarries (Metrication) Regulations 1976, SI 1976/2063; the Offices, Shops and Railway Premises Act 1963 etc (Metrication) Regulations 1982, SI 1982/827 (now revoked); the Miscellaneous Mines (Metrication) Regulations 1983, SI 1983/994; and the Construction (Metrication) Regulations 1984, SI 1984/1593 (now revoked).

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### **354. Financial provisions.**

The Secretary of State<sup>1</sup> must pay to the Health and Safety Executive<sup>2</sup> such sums as are approved by the Treasury and as he considers appropriate for the purpose of enabling it to perform its functions<sup>3</sup>.

Regulations<sup>4</sup> may provide for such fees as may be fixed by or determined under them to be payable for or in connection with the performance by or on behalf of any of certain authorities<sup>5</sup> of any function conferred on the authority by or under any of the relevant statutory provisions<sup>6</sup>.

Any expenses incurred by a minister of the Crown or government department for the purposes of the Health and Safety at Work etc Act 1974 and any increase attributable to the provisions of that Act in the sums payable under any other Act<sup>7</sup> out of money provided by Parliament must be paid out of money so provided<sup>8</sup>. Any sums received by a minister of the Crown or government department by virtue of the Act must be paid into the Consolidated Fund<sup>9</sup>.

1 As to the Secretary of State see PARA 349.

2 As to the Health and Safety Executive see PARA 361 et seq.

3 Health and Safety at Work etc Act 1974 s 43(1) (amended by SI 2008/960).

4 The power to make regulations is exercisable by the Secretary of State: Health and Safety at Work etc Act 1974 s 43(6) (substituted by the Employment Protection Act 1975 s 116, Sch 15 para 12; and amended by SI 2002/794).

5 I.e. the Health and Safety Executive, the Secretary of State, every enforcing authority (see PARA 352 note 2) and any other person on whom any function is conferred by or under any of the relevant statutory provisions (as to which see PARA 302 note 24): Health and Safety at Work etc Act 1974 s 43(3) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 12, Sch 18; and by SI 2008/960). The performance by an inspector of his functions must be treated as the performance by the enforcing authority which appointed him of functions conferred on that authority by or under any of the relevant statutory provisions: Health and Safety at Work etc Act 1974 s 43(9). As to inspectors see PARA 375 et seq.

6 Health and Safety at Work etc Act 1974 s 43(2). As to the relevant statutory provisions see PARA 302 note 24. The regulations may specify the person by whom any fee they make payable is to be paid; but no such fee may be made payable by an employee, a person seeking employment, a person training for employment (including a person attending an industrial rehabilitation course provided by virtue of the Employment and Training Act 1973: see **EMPLOYMENT**) or a person seeking training for employment (including a person seeking to attend such a course): Health and Safety at Work etc Act 1974 s 43(4), (8). Without prejudice to s 82(3) (see PARA 350), the regulations may fix or provide for the determination of different fees in relation to different functions, or in relation to the same function in different circumstances: s 43(5). The current regulations are the Health and Safety (Fees) Regulations 2009, SI 2009/515. As to the meaning of 'employee' see PARA 302 note 4.

7 As to the meaning of 'Act' see PARA 350 note 15.

8 Health and Safety at Work etc Act 1974 s 81.

9 Health and Safety at Work etc Act 1974 s 81. As to the Consolidated Fund see **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

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## **(ii) Functions and Powers under the Factories Act 1961**

### **355. General functions.**

The administration of the Factories Act 1961<sup>1</sup> is principally the responsibility of the Secretary of State<sup>2</sup>, but many of the powers formerly exercisable by him under it have been abrogated<sup>3</sup> consequent upon the introduction, by the Health and Safety at Work etc Act 1974, of a comprehensive scheme for ensuring safety at work<sup>4</sup>. In particular he no longer has power, by virtue of the Factories Act 1961, to appoint factory inspectors<sup>5</sup>, to make special regulations<sup>6</sup> or to enforce the provisions of the Act in case of default by a district council<sup>7</sup>.

1 The Factories Act 1961 was a consolidating measure which repealed and replaced the Lead Paint (Protection against Poisoning) Act 1926, the Employment of Women and Young Persons Act 1936, the Factories Acts 1937 to 1959, and the Slaughterhouses Act 1958 s 7: Factories Act 1961 s 183(2), Sch 7 (repealed).

2 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355 et seq. In the Factories Act 1961, 'the minister' is defined as the Minister of Labour: see s 176(1). The functions of that minister are now transferred to the Secretary of State. As to the functions of the Secretary of State in relation to the Health and Safety at Work etc Act 1974, and their exercise, see PARA 349 et seq.

3 See the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 2(a), Sch 1.

4 See PARAS 302, 349 et seq.

5 See the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, Sch 1, which repealed the Factories Act 1961 s 145. As to the appointment of the present inspectorate see PARA 375.

6 See the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, regs 2(a), 7(3), Sch 1, which repealed, principally, the Factories Act 1961 s 62 (power to make welfare regulations) and s 76 (power to make special regulations for safety and health). As to the making of health and safety regulations, and the approval of codes of practice, under the Health and Safety at Work etc Act 1974 see PARA 424 et seq.

7 See the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, Sch 1, which repealed the Factories Act 1961 s 10. As to default powers under the Health and Safety at Work etc Act 1974 see PARA 352.

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### **356. Subordinate legislation.**

Any regulations, rules or orders<sup>1</sup> made under the Factories Act 1961 must be made by statutory instrument<sup>2</sup>, except an order applicable only to particular persons, premises, boilers, employment, operations or work or to persons employed at particular premises or on work supervised from particular premises<sup>3</sup>.

Any power conferred by the Factories Act 1961 to prescribe standards or impose requirements includes power to do so by reference to the approval of an authorised inspector or of the chief employment medical adviser or a deputy chief employment medical adviser<sup>4</sup>.

With specific exceptions<sup>5</sup>, regulations, rules and orders made or having effect under repealed provisions and in force immediately before the repeal continue in force<sup>6</sup>.

1 Any power conferred by the Factories Act 1961 to make regulations, rules or orders includes power to make different provisions in relation to different circumstances: Factories Act 1961 s 180(3). As to powers so conferred to make orders see PARA 306.

2 Any statutory instrument containing regulations under the Factories Act 1961 is subject to annulment in pursuance of a resolution of either House of Parliament: s 180(2). For statutory provisions relating to instruments which are subject after making to negative procedure see the Statutory Instruments Act 1946 ss 5, 7; and **STATUTES**. For provisions relating to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and **PARLIAMENT** vol 34 (Reissue) PARA 942.

3 Factories Act 1961 s 180(1). Any regulations or order made by the Secretary of State under the Act may be made for a limited period, or without limit, subject to such conditions as he thinks fit, and may contain such supplemental and consequential provisions as he considers necessary for giving full effect to the regulations or order: s 180(9).

4 Factories Act 1961 s 180(6) (amended by the Employment Medical Advisory Service Act 1972 s 2(3)): see PARA 384 et seq. As to authorised inspectors see PARA 375 note 2.

5 Ie those set out in the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 3.

6 Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 7(3).

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### **(iii) Functions and Powers under the Offices, Shops and Railway Premises Act 1963**

#### **357. General functions.**

The administration of the Offices, Shops and Railway Premises Act 1963 is principally the responsibility of the Secretary of State<sup>1</sup>, but many of the powers formerly exercisable by him under that Act have been abrogated<sup>2</sup>, consequent upon the introduction, by the Health and Safety at Work etc Act 1974, of a comprehensive scheme for ensuring safety at work<sup>3</sup>. In particular he no longer has power, by virtue of the provisions of the 1963 Act, to exercise the powers and duties of local authorities in default<sup>4</sup> or to make special regulations<sup>5</sup>.

1 For the purposes of the Offices, Shops and Railway Premises Act 1963 'the minister' means the Secretary of State for Work and Pensions: s 90(1) (definition amended by virtue of SI 1968/729; SI 1970/1537; and subsequent orders culminating in the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397; as to the transfer of employment functions see art 8). As to the functions of the Secretary of State under the Health and Safety at Work etc Act 1974, and their exercise, see PARA 349.

2 See the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, reg 2(a), Sch 1.

3 See PARAS 302, 349 et seq, 374.

4 See the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, Sch 1, repealing the Offices, Shops and Railway Premises Act 1963 s 61.

5 See the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, Sch 1, repealing (principally) the Offices, Shops and Railway Premises Act 1963 s 20 (power to make regulations for securing health and safety).

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### **358. Subordinate legislation.**

Any regulations or orders made under the Offices, Shops and Railway Premises Act 1963 by the Secretary of State<sup>1</sup> must be made by statutory instrument<sup>2</sup>.

Any power conferred by that Act to prescribe standards or impose requirements includes power to do so by reference to the approval of the Health and Safety Executive<sup>3</sup>; and any power conferred by or by virtue of that Act to make an order includes power to vary or revoke the order by a subsequent order, and the provisions of the Health and Safety at Work etc Act 1974 as to regulations under the relevant statutory provisions<sup>4</sup> apply to any such power as they apply to the power to make regulations<sup>5</sup>.

With specified exceptions<sup>6</sup>, regulations and orders made under repealed<sup>7</sup> provisions and in force immediately before the repeal continue in force<sup>8</sup>.

1 As to the Secretary of State see PARA 357 note 1.

2 Offices, Shops and Railway Premises Act 1963 s 80(1) (s 80 amended by SI 1974/1943). A statutory instrument containing regulations under the Act is subject to annulment in pursuance of a resolution of either House of Parliament: Offices, Shops and Railway Premises Act 1963 s 80(2). For the provisions as to statutory instruments which are subject to such annulment see the Statutory Instruments Act 1946 ss 5, 7; and **STATUTES**. See also the Laying of Documents before Parliament (Interpretation) Act 1948; and **PARLIAMENT** vol 34 (Reissue) PARA 942. Any power conferred by the Offices, Shops and Railway Premises Act 1963 to make regulations and any power conferred by or by virtue of that Act to make an order includes power to make different provision in relation to different circumstances: s 80(3) (as so amended). The definition of a class of premises, rooms or persons for the purposes of any regulations or order under that Act may be framed by reference to any circumstances whatever: s 90(5).

3 Offices, Shops and Railway Premises Act 1963 s 80(4) (as amended: see note 2). As to the Health and Safety Executive see PARA 361 et seq.

4 I.e. the provisions of the Health and Safety at Work etc Act 1974 s 50 (see PARA 350): Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, Sch 2 para 14.

5 Offices, Shops and Railway Premises Act 1963 s 80(7) (as amended: see note 2).

6 I.e. except as provided by the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, reg 3, which revokes the Offices, Shops and Railway Premises Act 1963 (Conduct of Inquiries) Regulations 1965, SI 1965/1360, and amended the Offices, Shops and Railway Premises (Hoists and Lifts) Regulations 1968, SI 1968/849, regs 1(3), 6(3) (now revoked).

7 I.e. repealed by the Offices, Shops and Railway Premises (Repeals and Modifications) Regulations 1974, SI 1974/1943.

8 Offices, Shops and Railway Premises (Repeals and Modifications) Regulations 1974, SI 1974/1943, reg 4(3).



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### **359. Financial provisions.**

Any expenses incurred by the Secretary of State<sup>1</sup> in carrying into effect the Offices, Shops and Railway Premises Act 1963 must be defrayed out of money provided by Parliament<sup>2</sup>. Any sums received by him under the Act must be paid into the Exchequer<sup>3</sup>.

1 As to the Secretary of State see PARA 357 note 1.

2 Offices, Shops and Railway Premises Act 1963 s 82(1)(a). Section 82(1)(b), (c) refers to expenses under legislation which is now repealed.

3 Offices, Shops and Railway Premises Act 1963 s 82(2).

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#### **(iv) Functions and Powers under Legislation relating to Mines etc**

##### **360. Mines and quarries etc.**

The Secretary of State's power to make health and safety regulations for the general purposes of the health, safety and welfare provisions of the Health and Safety at Work etc Act 1974<sup>1</sup> supersedes the earlier powers under the Mines and Quarries Acts 1954 and 1969 to make general or special regulations, which have been repealed<sup>2</sup>.

The Secretary of State has particular power under the Mining Industry Act 1920 to hold such inquiries as he may consider necessary or desirable for the purposes of his duties in connection with mines and quarries<sup>3</sup>. This power is discussed elsewhere in this work<sup>4</sup>.

1    I.e. the power under the Health and Safety at Work etc Act 1974 s 15(1): see PARA 349.

2    Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), (2)(a), (3)(a), Sch 1 Pts I-III: see PARA 343. A number of the regulations made under the powers referred to in the text are, however, continued in force: see PARA 343 note 3.

3    See the Mining Industry Act 1920 ss 22, 25.

4    See **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 519.

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### **(3) THE HEALTH AND SAFETY EXECUTIVE**

#### **361. Establishment of the Executive.**

The Health and Safety Executive is a body corporate<sup>1</sup> consisting of a chair and not fewer than seven nor more than eleven other members, all appointed by the Secretary of State<sup>2</sup>. Before appointing the members, other than the chair, the Secretary of State must (1) as to three of them, consult such organisations representing employers as he considers appropriate<sup>3</sup>; (2) as to three others, consult such organisations representing employees as he considers appropriate<sup>4</sup>; (3) as to one other, consult such organisations representing local authorities<sup>5</sup> as he considers appropriate<sup>6</sup>; and (4) as to up to four others, consult the Scottish Ministers, the Welsh Ministers or such other organisations, including professional bodies the activities of whose members are concerned with matters relating to any of the general purposes of Part I of the Health and Safety at Work etc Act 1974<sup>7</sup>, as he considers appropriate<sup>8</sup>. He may, with the approval of the chair, appoint one of the members to be deputy chair of the Executive<sup>9</sup>.

1 The fixing of the common seal of the Executive must be authenticated by the signature of the chair of the Executive or some other person authorised by it to act for that purpose: Health and Safety at Work etc Act 1974 s 10(2), Sch 2 para 12(1) (s 10, Sch 2 substituted by SI 2008/960). A document purporting to be duly executed under the seal of the Executive is to be received in evidence and is to be deemed to be so executed unless the contrary is proved: Health and Safety at Work etc Act 1974 Sch 2 para 12(2) (as so substituted).

2 Health and Safety at Work etc Act 1974 Sch 2 paras 1, 2(1), (2) (as substituted: see note 1). As to the functions of the Secretary of State see PARA 349 et seq.

3 Health and Safety at Work etc Act 1974 Sch 2 para 2(3)(a) (as substituted: see note 1).

4 Health and Safety at Work etc Act 1974 Sch 2 para 2(3)(b) (as substituted: see note 1).

5 As to the meaning of 'local authority' see PARA 305 note 3.

6 Health and Safety at Work etc Act 1974 Sch 2 para 2(3)(c) (as substituted: see note 1).

7 The purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54): see PARA 303.

8 Health and Safety at Work etc Act 1974 Sch 2 para 2(3)(d) (as substituted: see note 1). Among the extra-statutory bodies which may be consulted are (1) the Institution of Occupational Safety and Health; (2) the Royal Society for the Prevention of Accidents; and (3) the British Safety Council.

The Institution of Occupational Safety and Health is an independent professional body for health and safety professionals, representing some 27,000 members in over 50 countries. The Institution was officially incorporated by Royal Charter on 1 April 2003 and has a set of byelaws approved by the Privy Council which all members have to observe. The Institution maintains an internet site on the World Wide Web where full details of its organisation and activities may be found; and has a role in delivering health and safety training through its accredited courses. At the date at which this title states the law, the Institution's internet site was accessible at [www.iosh.co.uk](http://www.iosh.co.uk). The Institution's office is at The Grange, Highfield Drive, Wigston, Leicestershire, LE18 1NN.

The Royal Society for the Prevention of Accidents ('RoSPA') is a registered charity which provides information, advice, resources and training in safety matters and is actively involved in the promotion of safety at work, in the home, and on the roads, in schools, at leisure and on (or near) water. RoSPA publishes three occupational safety journals and its other resources include an internet site specifically aimed at young workers. At the date at which this title states the law, RoSPA's internet site was accessible at [www.rospace.com](http://www.rospace.com). RoSPA's head office is at RoSPA House, Edgbaston Park, 353 Bristol Road, Edgbaston, Birmingham B5 7ST.

The British Safety Council, founded in 1957, is a registered charity for education in health and safety. It also has an international division with member organisations in over 40 countries. At the date at which this title states

the law, the Council's internet site was accessible at [www.britishsafetycouncil.org](http://www.britishsafetycouncil.org). The Council's head office is at 70 Chancellors Road, London W6 9RS.

9 Health and Safety at Work etc Act 1974 Sch 2 para 2(5) (as substituted: see note 1).

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### **362. Membership of the Executive.**

A person holds and vacates office as the chair or a member of the Health and Safety Executive in accordance with the terms of his instrument of appointment<sup>1</sup>, and he may at any time resign his office by giving notice in writing to the Secretary of State<sup>2</sup>. Service as the chair or as another member of the Executive is not service in the civil service of the state<sup>3</sup>. In certain circumstances<sup>4</sup> the Secretary of State may remove a chair or other member<sup>5</sup>. The validity of any proceedings of the Executive is not affected by any vacancy among the members or by any defect in the appointment of a member<sup>6</sup>. The Executive may regulate its own procedure<sup>7</sup>, but must consult with the Secretary of State before making or revising its rules and procedures for dealing with conflicts of interest<sup>8</sup>, and must from time to time publish a summary of its rules and procedures<sup>9</sup>.

1 Health and Safety at Work etc Act 1974 s 10(2), Sch 2 para 3 (s 10, Sch 2 substituted by SI 2008/960). As to the establishment of the Health and Safety Executive see PARA 361. As to the Secretary of State see PARA 349 et seq.

2 Health and Safety at Work etc Act 1974 Sch 2 para 4 (as substituted: see note 1).

3 Health and Safety at Work etc Act 1974 Sch 2 para 2(4) (as substituted: see note 1).

4 Ie if a member (1) has been absent from meetings of the Executive for a period longer than six months without its permission (Health and Safety at Work etc Act 1974 Sch 2 para 5(a) (as substituted: see note 1)); (2) has become bankrupt or made an arrangement with his creditors (Sch 2 para 5(b) (as so substituted)); (3) has become incapacitated by physical or mental illness (Sch 2 para 5(d) (as so substituted)); or (4) is otherwise, in the opinion of the Secretary of State, unable or unfit to carry out his functions (Sch 2 para 5(e) (as so substituted)).

5 Health and Safety at Work etc Act 1974 Sch 2 para 5 (as substituted: see note 1).

6 Health and Safety at Work etc Act 1974 Sch 2 para 7(2) (as substituted: see note 1).

7 Health and Safety at Work etc Act 1974 Sch 2 para 7(1) (as substituted: see note 1).

8 Health and Safety at Work etc Act 1974 Sch 2 para 7(3) (as substituted: see note 1).

9 Health and Safety at Work etc Act 1974 Sch 2 para 7(4) (as substituted: see note 1).

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### **363. Remuneration of members.**

The Health and Safety Executive must pay to each member such remuneration and such travelling and other allowances as may be determined by the Secretary of State<sup>1</sup>, and must pay to, or in respect of, any member such sums by way of pension, superannuation allowances and gratuities as the Secretary of State may determine<sup>2</sup>. Where a person ceases to be a member otherwise than on the expiry of his term of office and the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Executive must pay to him such amount by way of compensation as the Secretary of State may determine<sup>3</sup>. The Secretary of State must not make any determination under these provisions except with the approval of the Minister for the Civil Service<sup>4</sup>.

1 See the Health and Safety at Work etc Act 1974 s 10(2), Sch 2 para 6(1) (s 10, Sch 2 substituted by SI 2008/960). As to the Secretary of State see PARA 349. As to membership of the Executive see PARA 362.

2 Health and Safety at Work etc Act 1974 Sch 2 para 6(2) (as substituted: see note 1).

3 Health and Safety at Work etc Act 1974 Sch 2 para 6(3) (as substituted: see note 1).

4 Health and Safety at Work etc Act 1974 Sch 2 para 11 (as substituted: see note 1).

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**364. Staff.**

The Health and Safety Executive must, with the consent of the Secretary of State<sup>1</sup>, appoint a person to act as chief executive on such terms and conditions as the Secretary of State may determine<sup>2</sup>. The Health and Safety Executive must appoint such other staff to the service of the Executive as it may determine, with the consent of the Secretary of State as to numbers of persons appointed and as to the terms and conditions of their service<sup>3</sup>. A person appointed to the staff of the Executive may not at the same time be a member of the Executive<sup>4</sup>. Service as a member of staff of the Executive is service in the civil service of the state<sup>5</sup>.

1 As to the Secretary of State see PARA 349.

2 Health and Safety at Work etc Act 1974 s 10(2), Sch 2 para 8(1) (s 10, Sch 2 substituted by SI 2008/960). The Secretary of State must not make any such determination or give such consent except with the approval of the Minister for the Civil Service: Health and Safety at Work etc Act 1974 Sch 2 para 11 (as so substituted). The Executive must pay to the Minister for the Civil Service at such times as that minister may direct, such sums as the minister may determine in respect of any increase attributable to Sch 2 para 8 in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Health and Safety at Work etc Act 1974 Sch 2 para 8(3) (as so substituted).

3 Health and Safety at Work etc Act 1974 Sch 2 para 8(2) (as substituted: see note 1). As to the consent of the Secretary of State see note 2.

4 Health and Safety at Work etc Act 1974 Sch 2 para 8(4) (as substituted: see note 1).

5 Health and Safety at Work etc Act 1974 Sch 2 para 8(5) (as substituted: see note 1).

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### **365. Accounts and reports.**

It is the duty of the chief executive<sup>1</sup> to (1) keep proper accounts and proper records in relation to the accounts<sup>2</sup>; (2) prepare a statement of accounts in respect of each accounting year<sup>3</sup>; and (3) send copies of the statement to the Secretary of State and the Comptroller and Auditor General annually<sup>4</sup>. The Comptroller and Auditor General must examine, certify and report on each such statement and must lay copies of each statement and his report before each House of Parliament<sup>5</sup>.

Any sums received by the Executive must be paid into the Consolidated Fund except to such extent as the Secretary of State and the Treasury agree to their retention by the Executive<sup>6</sup>.

As soon as possible after the end of each accounting year, the Executive must make to the Secretary of State a report on the performance of its functions during that year<sup>7</sup>, and the Secretary of State must lay the report before each House of Parliament<sup>8</sup>.

1 As to the appointment of the chief executive see PARA 364.

2 Health and Safety at Work etc Act 1974 s 10(2), Sch 2 para 10(1)(a) (s 10, Sch 2 substituted by SI 2008/960).

3 Health and Safety at Work etc Act 1974 Sch 2 para 10(1)(b) (as substituted: see note 2). 'Accounting year' means the period of 12 months ending with 31 March in any year; but, if the Secretary of State so directs, the first accounting year of the Executive must be of such other period not exceeding two years as may be specified in the direction: Sch 2 para 10(5) (as so substituted). The statement of accounts must be in such form as the Secretary of State may direct with Treasury approval: Sch 2 para 10(1)(b) (as so substituted). As to the Secretary of State see PARA 349.

4 Health and Safety at Work etc Act 1974 Sch 2 para 10(1)(c) (as substituted: see note 2). The copies must be sent to the Comptroller and Auditor General before the end of November next following the accounting year to which the statement relates: Sch 2 para 10(1)(c) (as so substituted). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

5 Health and Safety at Work etc Act 1974 Sch 2 para 10(2) (as substituted: see note 2).

6 Employment and Training Act 1981 s 10 (amended by the Employment Act 1989 s 29(4), Sch 7 Pt I; and by SI 2008/960). As to the Consolidated Fund see **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

7 Health and Safety at Work etc Act 1974 Sch 2 para 10(3) (as substituted: see note 2).

8 Health and Safety at Work etc Act 1974 Sch 2 para 10(4) (as substituted: see note 2).



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### **366. Control by the Secretary of State.**

The Secretary of State<sup>1</sup> may at any time give to the Health and Safety Executive such directions as he thinks fit with respect to its functions (including directions modifying<sup>2</sup> its functions, but not directions conferring on it functions other than any of which it was deprived by previous directions<sup>3</sup>) and such directions as appear to him requisite or expedient to give in the interests of the safety of the state<sup>4</sup>. The Executive must from time to time submit to the Secretary of State particulars of what it proposes to do for the purpose of performing its functions<sup>5</sup> and he may approve any such proposals with or without modifications<sup>6</sup>. The Executive must ensure that its activities are in accordance with proposals approved by the Secretary of State<sup>7</sup> and it must give effect to any directions given to it by him<sup>8</sup>.

1 As to the Secretary of State see PARA 349.

2 As to the meaning of 'modifications' see PARA 350 note 7.

3 Health and Safety at Work etc Act 1974 s 12(4) (ss 11, 12 substituted by SI 2008/960).

4 Health and Safety at Work etc Act 1974 s 12(2) (as substituted: see note 3). The Secretary of State may not under s 12(2) give any directions with regard to the enforcement of the relevant statutory provisions in any particular case: s 12(3) (as so substituted). As to the relevant statutory provisions see PARA 302 note 24.

5 Health and Safety at Work etc Act 1974 s 11(5)(a) (as substituted: see note 3).

6 Health and Safety at Work etc Act 1974 s 12(1) (as substituted: see note 3).

7 Health and Safety at Work etc Act 1974 s 11(5)(b) (as substituted: see note 3).

8 Health and Safety at Work etc Act 1974 s 11(5)(c) (as substituted: see note 3).

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### **367. Functions and duties of the Executive.**

The functions of the Health and Safety Executive, and of its officers and servants<sup>1</sup>, are performed on behalf of the Crown<sup>2</sup>.

It is the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of Part I of the Health and Safety at Work etc Act 1974<sup>3</sup>. It must also:

- 75 (1) assist and encourage persons concerned with matters relevant to any of the general purposes of Part I of the Act to further those purposes<sup>4</sup>;
- 76 (2) make such arrangements as it considers appropriate for the carrying out of research and the publication of the results of research and the provision of training and information, and encourage research and the provision of training and information by others<sup>5</sup>;
- 77 (3) make such arrangements as it considers appropriate to secure that government departments, local authorities<sup>6</sup>, employers, employees<sup>7</sup>, organisations representing employers and employees respectively, and other persons concerned with matters relevant to any of the purposes of Part I of the Act, are provided with an information and advisory service on matters relevant to those purposes and are kept informed of and are adequately advised on such matters<sup>8</sup>;
- 78 (4) submit from time to time to the Secretary of State<sup>9</sup> such proposals as the Executive considers appropriate for the making of regulations under any of the relevant statutory provisions<sup>10</sup>.

The Executive must provide a minister of the Crown on request with information about its activities in connection with any matter with which the minister is concerned, and with advice on any matter with which he is concerned, where relevant expert advice is obtainable from any of the officers or servants of the Executive, but which is not relevant to the general purposes of Part I of the Act<sup>11</sup>.

The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises, or any activity carried on there may be transferred from the Executive to a local authority, or from a local authority to the Executive, by agreement between the Executive and local authority as to the proposed transfer<sup>12</sup>. The authority to which responsibility has been transferred must then cause notice of the transfer to be given to persons affected by it<sup>13</sup>.

Either the Executive or a local authority may apply to the Secretary of State for the purpose of removing uncertainty as to their respective responsibilities, and where the Secretary of State considers that there is uncertainty he must, after considering the circumstances and any views that may have been expressed on them by either of the enforcing authorities or by persons affected, assign responsibility to whichever authority he considers appropriate<sup>14</sup>. Where such an assignment is made, the Secretary of State must cause notice of the assignment to be given to both enforcing authorities concerned and to persons affected by it<sup>15</sup>.

1 As to the staff of the Health and Safety Executive see PARA 364.

2 Health and Safety at Work etc Act 1974 s 10(3) (ss 10, 11, 13 substituted by SI 2008/960). As to the establishment of the Executive see PARA 361. For the purposes of civil proceedings arising out of the Executive's functions, the Crown Proceedings Act 1947 applies to the Executive as if it were a government department within the meaning of that Act: Health and Safety at Work etc Act 1974 s 10(4) (as so substituted). The Executive has power to do anything (except borrow money) which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions, including a function conferred on it by s 13(1): s 13(1), (2) (as so substituted).

3 Health and Safety at Work etc Act 1974 s 11(1) (as substituted: see note 2). As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) see PARA 303. In s 11(1)-(3), references to the general purposes of Pt I do not include references to the railway safety purposes: s 11(4)(a) (as so substituted). As to the meaning of 'railway safety purposes' see PARA 350 note 9.

4 Health and Safety at Work etc Act 1974 s 11(2)(a) (as substituted: see note 2).

5 Health and Safety at Work etc Act 1974 s 11(2)(b) (as substituted: see note 2).

6 As to the meaning of 'local authority' see PARA 372 note 3.

7 As to the meaning of 'employee' see PARA 302 note 4.

8 Health and Safety at Work etc Act 1974 s 11(2)(c) (as substituted: see note 2).

9 As to the Secretary of State see PARA 349.

10 Health and Safety at Work etc Act 1974 s 11(3) (as substituted: see note 2). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24. The reference to the making of regulations under the relevant statutory provisions does not include a reference so far as the regulations are made for the railway safety purposes: s 11(4)(b) (as so substituted). For an example of regulations made for the purpose of giving effect without modification to proposals submitted to the Secretary of State by the Health and Safety Executive see the Control of Major Accident Hazard (Amendment) Regulations 2008, SI 2008/1087. Formerly, such regulations were submitted by the Health and Safety Commission (abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2): see eg the Pressure Systems Safety Regulations 2000, SI 2000/128; and PARA 544 et seq; and the Biocidal Products Regulations 2001, SI 2001/880, which regulate the placing on the market and use of certain biocidal products and implement European Parliament and EC Council Directive 98/8 (OJ L123, 24.4.98).

11 Health and Safety at Work etc Act 1974 s 11(6) (as substituted: see note 2).

12 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 5(1), (2) (reg 5(2) amended by SI 2008/960). As to the enforcing authorities see PARAS 370, 372.

13 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 5(3) (amended by SI 2008/960). The Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 5(2), (3) does not apply to any part of premises occupied by the Crown or to any activity carried on there but responsibility for enforcing any of the relevant statutory provisions in respect of office activities and the premises used for them may be transferred by an agreement between the Executive, the local authority concerned and the government department or other public body concerned: reg 5(4). 'Office activities' includes any activity for the purposes of administration, clerical work, handling money, telephone and telegraph operating and the production of computer software by the use of computers; and for this purpose 'clerical work' includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed: reg 2(1). As to the meaning of 'premises' see PARA 302 note 6.

14 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 6(2) (amended by SI 2008/960).

15 See note 14.

## UPDATE

### 367 Functions and duties of the Executive

NOTE 10--SI 2001/880 amended: SI 2010/745.

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### **368. Other powers of the Executive.**

The Health and Safety Executive<sup>1</sup> has power:

- 79 (1) to make agreements with a government department or other person for that department or person to perform any of its functions, with or without payment<sup>2</sup>;
- 80 (2) to make agreements with a minister of the Crown, a government department or a public authority to perform functions exercisable by that minister, department or authority, with or without payment<sup>3</sup>;
- 81 (3) to provide services or facilities, with or without payment, otherwise than for the general purposes of Part I of the Health and Safety at Work etc Act 1974<sup>4</sup>, to a government department or public authority in connection with the exercise of that department's or authority's functions<sup>5</sup>;
- 82 (4) to appoint persons or committees of persons to provide it with advice in connection with any of its functions and to remunerate such persons, the remuneration being of such amount as may be determined by the Secretary of State with the approval of the Treasury<sup>6</sup>;
- 83 (5) in connection with the performance of any of its functions, to pay to any person such travelling and subsistence allowances and such compensation for loss of remunerative time as may be determined by the Secretary of State with the approval of the Treasury<sup>7</sup>;
- 84 (6) to carry out, arrange for, or make payments for the carrying out of, research into any matter connected with its functions, and to disseminate or arrange for or make payments for the dissemination of information derived from such research<sup>8</sup>;
- 85 (7) to include, in any arrangements made by it for the provision of services or facilities, provision for the making of payments to the Executive or any person acting on its behalf by other parties to the arrangements and by persons using those services or facilities<sup>9</sup>.

<sup>1</sup> As to the Health and Safety Executive see PARA 361 et seq. As to the Executive's functions and duties see PARA 367.

<sup>2</sup> Health and Safety at Work etc Act 1974 s 13(3) (s 13 substituted by SI 2008/960). Where by virtue of this provision the performance of any function of the Executive is delegated, references to the Executive (or to an enforcing authority where that authority is the Executive) in any provision of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) which relates to that function must be construed, so far as may be necessary to give effect to the agreement, as references to the appropriate department or person; and accordingly, any reference to the field of responsibility of an enforcing authority must be construed as a reference to the field over which that department or person for the time being performs such a function: s 18(7) (amended by SI 2008/960). As to the meaning of 'enforcing authority' see PARA 352 note 2.

<sup>3</sup> Health and Safety at Work etc Act 1974 s 13(4) (as substituted: see note 2). Such functions (1) in the case of a minister of the Crown, include functions not conferred by an enactment; (2) must be functions which the Secretary of State considers can be appropriately performed by the Executive; and (3) do not include any power to make regulations or other instruments of a legislative character: s 13(5) (as so substituted). As to the Secretary of State see PARA 349.

<sup>4</sup> As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I see PARA 303.

<sup>5</sup> Health and Safety at Work etc Act 1974 s 13(6) (as substituted: see note 2).

6 Health and Safety at Work etc Act 1974 s 13(7), (9) (as substituted: see note 2). This power is without prejudice to the generality of the power to pay travelling and subsistence allowances etc under s 13(8) (see the text to note 7): s 13(7).

7 Health and Safety at Work etc Act 1974 s 13(8), (9) (as substituted: see note 2).

8 Health and Safety at Work etc Act 1974 s 13(10) (as substituted: see note 2).

9 Health and Safety at Work etc Act 1974 s 13(11) (as substituted: see note 2). As to the approval of and issue by the Executive of codes of practice see PARA 426; and as to the Executive's power to direct investigations and inquiries see PARA 398.

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### **369. Obtaining information.**

For the purpose of either (1) obtaining any information which the Health and Safety Executive needs for the discharge of its functions<sup>1</sup>; or (2) obtaining any information which an enforcing authority<sup>2</sup> needs for the discharge of the authority's functions<sup>3</sup>, the Executive, with the consent<sup>4</sup> of the Secretary of State<sup>5</sup>, may serve on any person a notice requiring that person to furnish to it or, as the case may be, to the enforcing authority in question, such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified<sup>6</sup>. Information obtained by the Commissioners for Revenue and Customs for the purpose of the exercise of their functions in relation to imports may with their authority be disclosed to an enforcing authority or an inspector<sup>7</sup> as the Commissioners may direct<sup>8</sup>.

1 See the Health and Safety at Work etc Act 1974 s 27(1)(a) (amended by SI 2008/960). As to the Executive's functions see PARA 367.

2 As to the meaning of 'enforcing authority' see PARA 352 note 2.

3 See the Health and Safety at Work etc Act 1974 s 27(1)(b).

4 'Consent' includes a general consent extending to cases of any stated description: Health and Safety at Work etc Act 1974 s 27(1).

5 As to the Secretary of State see PARA 349.

6 Health and Safety at Work etc Act 1974 s 27(1) (amended by SI 2008/960). It is an offence for a person to contravene any requirement imposed by such a notice: Health and Safety at Work etc Act 1974 s 33(1)(i). 'Contravention' includes failure to comply, and 'contravene' has a corresponding meaning: s 82(1)(b). As to offences and penalties generally see PARA 852 et seq. As to restrictions on the disclosure of information obtained under s 27(1) see PARA 382.

7 As to the meaning of 'inspector' see PARA 375.

8 See the Health and Safety at Work etc Act 1974 s 27A (added by the Consumer Protection Act 1987 s 36, Sch 3 para 4; and amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 18). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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### 370. Other functions and duties.

The Health and Safety Executive must make adequate arrangements for the enforcement of the relevant statutory provisions<sup>1</sup>, except to the extent that some other authority or class of authorities is by any of those provisions or by regulations<sup>2</sup> of the Secretary of State made responsible for their enforcement<sup>3</sup>.

The Executive is the enforcing authority<sup>4</sup> for the enforcement of any of the relevant statutory provisions against a specified public body<sup>5</sup> or the officers or servants of such a body or against any part of premises<sup>6</sup> occupied by such a body<sup>7</sup>. Where premises are mainly occupied by such a body and are partly occupied by another person for the purpose of providing services at the premises for that body, the Executive is the enforcing authority for the part of the premises occupied by that other person<sup>8</sup>.

The Executive is also the enforcing authority for the provisions of the Health and Safety at Work etc Act 1974<sup>9</sup> regarding the general duties of manufacturers and others as regards articles and substances for use at work<sup>10</sup>. Additionally, it is the enforcing authority for the other relevant statutory provisions in respect of any of the following activities, whether or not it is the main activity carried on in premises<sup>11</sup>:

- 86 (1) any activity in a mine<sup>12</sup> or quarry<sup>13</sup> other than a quarry in respect of which notice of abandonment<sup>14</sup> has been given<sup>15</sup>;
- 87 (2) any activity in a fairground<sup>16</sup>;
- 88 (3) any activity in premises occupied by a radio, television or film<sup>17</sup> undertaking in which the activity of broadcasting, recording or filming is carried on, and the activity of broadcasting, recording or filming wherever carried on<sup>18</sup>;
- 89 (4) the following activities carried on at any premises by persons who do not normally work in the premises<sup>19</sup>:

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- 1. (a) certain types of construction work<sup>20</sup>;
- 2. (b) the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting<sup>21</sup>;
- 3. (c) the installation, maintenance or repair of electricity systems<sup>22</sup>;
- 4. (d) subject to certain exceptions<sup>23</sup>, work with ionising radiations<sup>24</sup>;

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- 90 (5) the use of ionising radiations for medical exposure<sup>25</sup>;
- 91 (6) any activity in premises occupied by a radiography undertaking in which there is carried on any work with ionising radiations<sup>26</sup>;
- 92 (7) agricultural activities<sup>27</sup>, and any activity at an agricultural show which involves the handling of livestock or the working of agricultural equipment<sup>28</sup>;
- 93 (8) any activity on board a sea-going ship<sup>29</sup>;
- 94 (9) any activity in relation to a ski slope, ski lift, ski tow or cable car<sup>30</sup>;
- 95 (10) fish, maggot and game breeding except in a zoo<sup>31</sup>;
- 96 (11) any activity in relation to a pipeline<sup>32</sup>;
- 97 (12) the operation of a guided bus system<sup>33</sup> or any other system of guided transport<sup>34</sup>, other than a railway<sup>35</sup>, that employs vehicles which for some or all of the time when they are in operation travel along roads<sup>36</sup>;
- 98 (13) the operation of a trolley vehicle system<sup>37</sup>.

The above provisions have effect subject to any provisions made for enforcement responsibility by other regulations made under the 1974 Act or by any of the existing statutory provisions<sup>38</sup>. They are also subject to the provisions for transfer or assignment of responsibility<sup>39</sup> which have already been discussed<sup>40</sup>.

Particular provision is made with regard to enforcement under the Manufacture and Storage of Explosives Regulations 2005<sup>41</sup> and the Explosives Act 1875<sup>42</sup>.

The Executive, and not the local authority, is also the enforcing authority in respect of the common parts of certain other premises<sup>43</sup>; and for the whole of the following premises:

- 99 (i) the tunnel system within the meaning of the Channel Tunnel Act 1987<sup>44</sup>;
- 100 (ii) an offshore installation<sup>45</sup>;
- 101 (iii) a building or construction site, that is to say, premises where the only activities being undertaken are construction work and activities for the purposes of or in connection with such work;
- 102 (iv) the campus of a university, [former] polytechnic, college, school or similar educational establishment;
- 103 (v) a hospital<sup>46</sup>.

Where the activities carried on in non-domestic premises are not such as to make the local authority the enforcing authority<sup>47</sup>, then the Executive will be the enforcing authority in respect of those premises<sup>48</sup>.

The Executive made a Concordat with the National Assembly for Wales in order to promote the establishment of close and harmonious working relationships and good communications at all levels between the Executive and the Assembly, and in particular to foster constructive co-operation<sup>49</sup>. The Annex to the Concordat lists areas of common concern<sup>50</sup>. The Executive has also made a Concordat with the Food Standards Agency<sup>51</sup> and has concluded various memoranda of understanding seeking to clarify its relationship with other agencies with safety responsibilities<sup>52</sup>.

There is also a draft memorandum of understanding for the enforcement of REACH<sup>53</sup>.

The Executive is a designated regulator for the purposes of the Regulatory Enforcement and Sanctions Act 2008<sup>54</sup>. The newly established Local Better Regulation Office<sup>55</sup> and the Executive are required to enter into a memorandum of understanding with each other as to how they will work together in the exercise of their respective functions<sup>56</sup>.

1 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 The regulations made under the Health and Safety at Work etc Act 1974 s 18(2) (see the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494; the text and notes 11-48; and PARA 372): Health and Safety at Work etc Act 1974 s 18(1).

3 Health and Safety at Work etc Act 1974 s 18(1). The text and notes 11-48 set out the premises and activities in respect of which the Executive is given enforcement responsibilities under the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494. These enforcement responsibilities include any such responsibilities under the Mines and Quarries Act 1954, the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. As to enforcement responsibilities in relation to railways see also PARA 844. As to other functions of the Executive in relation to enforcement see PARA 372. As to the Secretary of State see PARA 349. As to his control of the Executive see PARA 366.

4 As to the meaning of 'enforcing authority' see PARA 352 note 2. In the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (except reg 4(7): see note 42), unless the context otherwise requires, any reference to the enforcing authority for premises or parts of premises is a reference to the enforcing authority for the relevant statutory provisions in relation to those premises or parts, as the case may be, and to any activity carried on in them: reg 2(1).



5     ie a body specified in the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(3). The specified bodies are: (1) a county council; (2) any other local authority as defined in reg 2; (3) a parish council in England or a community council in Wales; (4) a police authority or the Receiver for the Metropolitan Police District; (5) a fire and rescue authority under the Fire and Rescue Services Act 2004; (6) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964; or a service authority of a visiting force within the meaning of the Visiting Forces Act 1952 s 12 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140); (7) the United Kingdom Atomic Energy Authority (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq); (8) the Crown, except in relation to any part of premises occupied by the Executive and to any activity carried on there, in which case the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 applies (ie the local authority is the enforcing authority: see PARA 372): reg 4(3) (amended by SI 2005/1541). As to the extra-statutory procedures for Crown enforcement see PARA 304.

6     As to the meaning of 'premises' see PARA 302 note 6.

7     Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(1).

8     Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(2).

9     ie the Health and Safety at Work etc Act 1974 s 6: see PARA 531.

10    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(4)(a).

11    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(4)(b).

12    'Mine' has the meaning assigned to it by the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1), but, notwithstanding s 180(5), does not include any railway serving the mine unless and to the extent that the railway is located within the curtilage of the mine: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (amended by SI 2006/557).

13    'Quarry' has the meaning assigned to it by the Quarries Regulations 1999, SI 1999/2024, reg 3 (see PARA 838): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition substituted by SI 1999/2024).

14    ie under the Quarries Regulations 1999, SI 1999/2024, reg 45(1): see PARA 838 note 15.

15    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 1.

16    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 2. 'Fairground' means such part of premises as is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered children's playground equipment, swimming pool slide, go-kart, or plant designed to be used by members of the public for entertainment purposes for bouncing upon: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1). As to the meaning of 'fairground equipment' see PARA 531 note 3.

17    For this purpose 'film' includes video: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 3.

18    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 3.

19    Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4.

20    ie construction work if (1) the project which includes the work is notifiable within the meaning of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(3) (see PARA 674 note 8); or (2) the whole or part of the work contracted to be undertaken by the contractor at the premises is to the external fabric or other external part of a building or structure; or (3) it is carried out in a physically segregated area of the premises, the activities normally carried out in that area have been suspended for the purpose of enabling the construction work to be carried out, the contractor has authority to exclude from that area persons who are not attending in connection with the carrying out of the work and the work is not the maintenance of insulation on pipes, boilers or other parts of heating or water systems or its removal from them: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4(a) (amended by virtue of SI 2007/320). The reference in the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4(a)(iii) (see head (3) above) to a physically segregated area does not include an area segregated only in order to prevent the escape of asbestos; and for this purpose 'asbestos' has the meaning assigned to it by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1) (see PARA 630 note 1): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4A (added by SI 2002/2675; and amended by SI 2006/2739). 'Construction work' and 'contractor' have the meanings assigned to them by the Construction

(Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (amended by SI 2007/320).

21 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4(b). 'Gas' and 'gas fitting' have the meanings assigned to them by the Gas Act 1986 s 48 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 802, 861): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1). 'Gas system' does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance: reg 2(1). 'Work' in relation to a gas fitting has the meaning assigned to it by the Gas Safety (Installation and Use) Regulations 1994, SI 1994/1886, reg 2(1) (revoked: see now the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (which defines 'work' in relation to a gas fitting as including any of the following activities carried out by any person, whether an employee or not: (1) installing or re-connecting the fitting; (2) maintaining, servicing, permanently adjusting, disconnecting, repairing, altering or renewing the fitting or purging it of air or gas; (3) where the fitting is not readily movable, changing its position; and (4) removing the fitting; but as not including the connection or disconnection of a bayonet fitting or other self-sealing connector); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 913): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1); Interpretation Act 1978 s 17(2).

22 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4(c). 'Electricity system' does not include the consumer's installation within the meaning of the Electricity Supply Regulations 1988, SI 1988/1057, reg 3(1) (revoked: see now the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (which defines 'consumer's installation' as meaning the electric lines situated upon the consumer's side of the supply terminals together with any equipment permanently connected or intended to be permanently connected thereto on that side); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1153): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1); Interpretation Act 1978 s 17(2).

23 Ie except work in one or more of the categories set out in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 1: see PARA 648 note 12.

24 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 4(d). 'Ionising radiation' has the meaning assigned to it by the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1) (see PARA 648 note 1): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition amended by SI 1999/3232).

25 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 5. Ie medical exposure within the meaning of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1): see PARA 648 note 4.

26 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 6.

27 'Agricultural activities': (1) includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, including the management of livestock up to the point of slaughter or export from Great Britain, forestry, the use of land as grazing land, market gardens and nursery grounds and the preparation of land for agricultural use; (2) does not include such activities at a garden centre or other shop, and for this purpose 'livestock breeding and keeping' does not include activities the main purpose of which is entertainment; and 'livestock' means any creature kept for the production of food, wool, skins or fur or for the purpose of any agricultural activity: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1).

28 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 7.

29 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 8.

30 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 9.

31 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 10. 'Zoo' has the meaning assigned to it by the Zoo Licensing Act 1981 s 1(2) (see **ANIMALS** vol 2 (2008) PARA 944): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1).

32 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 11. Ie a pipeline within the meaning of the Pipelines Safety Regulations 1996, SI 1996/825, reg 3: see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 611.

33 'Guided bus system' means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation (1) travel along roads; and (2) are guided (whether while on the road or at other times) by means of (a) apparatus, a structure or other device which is fixed and not part of the bus; or (b) a guidance system which is automatic: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition added by SI 2006/557). 'Road' means any length of highway or of any other road to which the public has access, and includes bridges over which a

road passes: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition added by SI 2006/557).

34 'Guided transport' means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of (1) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or (2) a guidance system which is automatic; and for this purpose 'vehicle' includes a mobile traction unit: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition added by SI 2006/557).

35 'Railway' means any system of transport the operation of which is specified in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(2) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition substituted by SI 2006/557).

36 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 12 (substituted by SI 2006/557).

37 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 13 (added by SI 2006/557). 'Trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definition added by SI 2006/557).

38 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(5). As to the existing statutory provisions see PARA 302 note 12.

39 In the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, regs 5, 6: see PARAS 367, 372.

40 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(6).

41 In the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082.

42 Notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(1)-(6) and subject to reg 4(8)-(10), a licensing authority is the enforcing authority for the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, and the Explosives Act 1875 s 23: (1) for a site in relation to which it has granted a person a licence for the manufacture or storage of explosives at that site under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 13 or registered a person in respect of such storage at that site under reg 11; (2) where, in relation to a deemed licence or deemed registration, it would have been the licensing authority by virtue of Sch 1 para 1 if an application for a licence or registration had been made under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082; and (3) where, in any other case than those referred to in heads (1) and (2) above, (a) it would be the licensing authority by virtue of Sch 1 para 1 if an application for a licence or registration is, or should have been, made under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082; or (b) it would have been the licensing authority had not the requirements of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 9(1) or, as the case may be, reg 10(1) been disapplied by virtue of any of the provisions of, respectively, reg 9(2) or 10(2) applying in the case concerned: reg 4(7) (reg 4(7) substituted, reg 4(8)-(11) added by SI 2005/1082). The Health and Safety Executive is the enforcing authority for the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, in respect of the manufacture and storage of ammonium nitrate blasting intermediate: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(8) (as so added; amended by SI 2009/693). A licensing authority is the enforcing authority for the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (see PARA 429) in relation to any manufacture or storage of explosives for which it is the enforcing authority by virtue of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(7): reg 4(9B) (added by SI 2009/693).

Except as provided by the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(9A), a licensing authority which is a local authority is the enforcing authority for the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 25 in the area of that local authority: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(9) (as so added; amended by SI 2009/693). However, the Executive is the enforcing authority for the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 25 for a site in relation to which it has granted a person a licence for the manufacture or storage of explosives under reg 13 or registered a person in respect of such storage under reg 11: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(9A) (added by SI 2009/693).

The enforcing authority for the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 6 where a person disposes of explosives or decontaminates explosive-contaminated items at a place other than at a site in relation to which a person has a licence to manufacture or store explosives under reg 13 or is registered in respect of such storage under reg 11, is (i) where the disposal or decontamination is carried out

by, or on behalf of, a person who holds a licence granted by the Executive under those regulations in a case in which the assent of the local authority was required under reg 13(3) of those regulations before the licence was granted, the Executive; (ii) subject to head (i) above, where the local authority is by virtue of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, the enforcing authority for the premises or part of premises at which the disposal or decontamination is carried out, the local authority; or (iii) in any other case, the Executive: reg 4(10) (as so added).

For these purposes, 'licensing authority', 'site', 'licence', 'registered', 'ammonium nitrate blasting intermediate' and 'disposes' have the same meanings as they are given by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 2(1), and 'deemed licence' and 'deemed registration' have the same meanings as they are given by reg 27(19) (see **EXPLOSIVES**): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(11) (as so added; amended by SI 2009/693). In the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(9), (10)(a), 'local authority' has the same meaning as it is given by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 2(1): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(12) (added by SI 2009/693).

43 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), (4), cited in PARA 372 notes 6, 9.

44 Ie within the meaning it would have in the Channel Tunnel Act 1987 s 1(7) if the words 'to be' did not appear.

45 Ie an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: see PARA 733 note 2.

46 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(5). Regulation 3(2) (see PARA 372 text and notes 7-8) does not apply: reg 3(5). Regulation 3 has effect subject to regs 4, 5 and 6: reg 3(7).

47 Ie the activities do not fall within the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1: see PARA 372.

48 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1); and PARA 372.

49 The Concordat, made with the National Assembly for Wales as constituted under the Government of Wales Act 1998, was published on the Executive's internet site ([www.hse.gov.uk](http://www.hse.gov.uk)) on 23 September 2000. Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), statutory functions exercisable by that Assembly are now the responsibility of the Welsh Ministers (ie the First Minister and the Welsh Ministers established under ss 46, 48: see s 45(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): see s 162, Sch 11 para 30. However, reference to the Assembly has been retained in the context of the Concordat.

50 The areas of common and related interests set out in the Annex to the Concordat between the Health and Safety Executive and the National Assembly for Wales are as follows: (1) building control; (2) dangerous substances; (3) educational facilities and adventure activity centres; (4) food safety; (5) genetically modified organisms; (6) local authorities; (7) planning; (8) pesticides (including biocides and plant protection products; (9) places of entertainment (cinemas, theatres, casinos, dance-halls etc), sports facilities, sports events and zoos; (10) ports and harbours; (11) protection of the environment; (12) public health/occupational health/health promotion; (13) nuclear safety; (14) rail safety; (15) safety of clinical and medical procedures; (16) water and sewerage.

51 At the date at which this title states the law, the text of this concordat (which has no legal force) was available at [www.hse.gov.uk](http://www.hse.gov.uk). Particular areas of mutual interest are enforcement; food safety offshore (for which the Executive continues to be the enforcing authority, as the Food Safety Act 1999 does not apply beyond territorial waters); the hygiene design aspects of food processing machinery; radioactive substances and toxic chemical releases; toxicity; risk analysis; and arrangements for handling major incidents and emergencies. As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

52 See eg the Memorandum of Understanding between the Health and Safety Executive and the Environment Agency on Matters of Mutual Concern at Nuclear Sites Licensed by the HSE in England and Wales; the Memorandum of Understanding between the Office of Water Services and the Health and Safety Executive; the Memorandum of Understanding between the Civil Aviation Authority Safety Regulation Group and the Health and Safety Executive; the Memorandum of Understanding between the Health and Safety Executive, the Maritime and Coastguard Agency and the Marine Accident Investigation Branch for health and safety enforcement activities etc at the water margins and offshore; and the Concordat between Bodies Inspecting, Regulating and Auditing Health and Social Care in Wales.

53 Draft Memorandum of Understanding for the Enforcement of REACH (HSE/08/33 Appendix 5). As to the meaning of REACH see PARA 574 text and note 1; and as to the enforcement of REACH see PARAS 574-579.

54 As to regulators designated for the purpose of imposing sanctions see the Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

55 The Local Better Regulation Office is established by the Regulatory Enforcement and Sanctions Act 2008 s 1. See **ADMINISTRATIVE LAW**.

56 Regulatory Enforcement and Sanctions Act 2008 s 12(1), (2)(d).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(3) THE HEALTH AND SAFETY EXECUTIVE/371. Publications issued by the Health and Safety Executive.

### **371. Publications issued by the Health and Safety Executive.**

The Health and Safety Executive issues a wide range of publications in the form of guidance and circulars to local authorities and others<sup>1</sup>. Among its recent publications is an enforcement guide for England and Wales which has particular relevance to the criminal enforcement of health and safety duties<sup>2</sup>. The guide includes a statement of the Health and Safety Executive's enforcement policy<sup>3</sup>. The criminal enforcement of health and safety duties is considered in a later part of this title<sup>4</sup>.

Health and Safety Executive guidance lacks the legal status of approved codes of practice, which are considered below<sup>5</sup>. In order to avoid confusion, such guidance now includes a standard introduction in the following terms: 'This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance as illustrating good practice'.

1 Through HSE Books the Executive publishes a series of guidance notes and advisory literature for employers, local authorities, trade unions etc on most aspects of health and safety of concern to industry. These are divided into five main areas, ie Chemical Safety (CS), Environmental Hygiene (EH), General Series (GS), Medical Series (MS), and Plant or Machinery (PM). In addition there are the Health and Safety (Guidance) Series (HS(G)); the Health and Safety (Regulations) Series (HS(R)); Legal Series (L); Best Practicable Means Leaflets (BPM); Emission Test Methods (ETM); Health and Safety Executive Leaflets (HSE); Industry General Leaflets (IND(G)); Industry Safety Leaflets (IND(S)); similarly, Methods for the Determination of Hazardous Substances (MDHS); Toxicity Reviews (TR); Occasional Papers; and Agricultural Safety Leaflets (AS).

2 See the HSE Enforcement Guide (England and Wales) (2003; updated October 2008) which is not, however, intended to provide legal guidance to members of the public. At the date at which this title states the law, the guide was available at [www.hse.gov.uk](http://www.hse.gov.uk).

3 As to the Executive's enforcement policy see the Health and Safety Executive's Enforcement Policy Statement published in February 2009. As to the extra-statutory procedures for Crown enforcement see PARA 304.

4 See PARA 852 et seq.

5 See PARA 426.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(4) LOCAL AUTHORITIES/372. Duties and powers under the Health and Safety at Work etc Act 1974.

#### (4) LOCAL AUTHORITIES

##### 372. Duties and powers under the Health and Safety at Work etc Act 1974.

Regulations may make local authorities responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed<sup>1</sup>.

Where the main activity carried on in non-domestic premises<sup>2</sup> is one of the activities specified below, the local authority<sup>3</sup> for the area in which those premises are situated is the enforcing authority<sup>4</sup> for them, and the Health and Safety Executive<sup>5</sup> is the enforcing authority in any other case including the common parts of domestic premises<sup>6</sup>. Where such premises are occupied by more than one occupier each part separately occupied is, subject to exceptions<sup>7</sup>, to be regarded as being separate premises for these purposes<sup>8</sup> and the local authority is the enforcing authority for the common parts<sup>9</sup>. While a vehicle is parked in connection with the sale from it of food, drink or other articles the vehicle together with its pitch is regarded as separate premises for these purposes<sup>10</sup>.

The specified activities are:

- 104 (1) the sale of goods<sup>11</sup>, or the storage of goods for retail or wholesale distribution, except:
  - 3
  - 5. (a) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises<sup>12</sup>, an airport or a railway;
  - 6. (b) where the main activity is the sale or storage for wholesale distribution of any dangerous substance or dangerous preparation<sup>13</sup>;
  - 7. (c) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas<sup>14</sup>;
- 4
- 105 (2) the display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale<sup>15</sup>;
- 106 (3) office activities<sup>16</sup>;
- 107 (4) catering services<sup>17</sup>;
- 108 (5) the provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers<sup>18</sup>;
- 109 (6) consumer services<sup>19</sup> provided in a shop except dry cleaning or radio and television repairs<sup>20</sup>;
- 110 (7) cleaning (wet or dry) in coin operated units in launderettes and similar premises<sup>21</sup>;
- 111 (8) the use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984, a physiotherapist, an osteopath or a chiropractor<sup>22</sup>;
- 112 (9) the practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where the main activity is the exhibition of a cave to the public<sup>23</sup>;
- 113 (10) the hiring out of pleasure craft<sup>24</sup> for use on inland waters<sup>25</sup>;

- 114 (11) the care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity<sup>26</sup> or veterinary surgery<sup>27</sup>;
- 115 (12) the activities of an undertaker, except where the main activity is embalming or the making of coffins<sup>28</sup>;
- 116 (13) church worship or religious meetings<sup>29</sup>;
- 117 (14) the provision of car parking facilities within the perimeter of an airport<sup>30</sup>;
- 118 (15) the provision of child care, or playgroup or nursery facilities<sup>31</sup>.

Every local authority must (i) make adequate arrangements for the enforcement within its area of the relevant statutory provisions to the extent that it is by any of those provisions or by regulations of the Secretary of State<sup>32</sup> made responsible for their enforcement<sup>33</sup>; and (ii) perform that duty, and any other functions conferred on it by any of the relevant statutory provisions, in accordance with such guidance as the Health and Safety Executive may give it<sup>34</sup>.

The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises, or any activity carried on there may be transferred from the Executive to the local authority or from the local authority to the Executive<sup>35</sup>.

1 See the Health and Safety at Work etc Act 1974 s 18(2), (3).

2 As to the meaning of 'non-domestic premises' see PARA 302 note 6.

3 For these purposes, 'local authority' means (1) in relation to England, a county council so far as it is the council for an area for which there are no district councils, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly; (2) in relation to Wales, a county council or a county borough council: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1). For the similar definition for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) see PARA 305 note 3.

4 As to the meaning of 'enforcing authority' see PARA 352 note 2. See also PARA 370 note 4.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1). Regulation 3 has effect subject to reg 4 (see PARA 370) and to regs 5, 6 (see the text and note 35; and PARA 367): reg 3(7). 'Common parts' means those parts of premises used in common by, or for providing common services to or common facilities for, the occupiers of the premises: reg 2(1).

7 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(4)(a), (b), cited in note 9. See also reg 3(5); and PARA 370 heads (i)-(v).

8 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(2).

9 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(4). If, however, the Executive is the enforcing authority for (1) all other parts of the premises, the Executive is the enforcing authority for the common parts; (2) any other part of the premises and the occupier of that part has any obligations under the relevant statutory provisions for any matters appertaining to the common parts, the Executive is the enforcing authority for those provisions in respect of such matters: reg 3(4)(a). Notwithstanding reg 3(4), the Office of Rail Regulation is the enforcing authority for the common parts in a railway station or terminal or in a goods yard which is served by a railway: reg 3(6) (amended by SI 2006/557). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24; and as to the meaning of 'railway' see PARA 370 note 35. As to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 49 et seq.

In the case of land within the perimeter of an airport the Executive is the enforcing authority for the common parts (a) which are not within a building; or (b) to which passengers are admitted but other members of the public are not admitted: reg 3(4)(b).

10 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(3).



11 For these purposes, where the main activity carried on in premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs the main activity is to be deemed to be the sale of goods: Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 1.

12 For these purposes, 'dock premises' has the meaning assigned to it by the Docks Regulations 1988, SI 1988/1655, reg 2(1) (see PARA 706): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1).

13 'Dangerous substance' and 'dangerous preparation' have the meanings assigned to those terms by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1) (see PARA 571 notes 2-3): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1) (definitions added by SI 2009/716).

14 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 1 (Sch 1 para 1(b) amended by SI 2009/716). As to the meaning of 'gas' see PARA 370 note 21.

15 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 2.

16 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 3. As to the meaning of 'office activities' see PARA 367 note 13.

17 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 4.

18 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 5.

19 For these purposes, 'consumer services' means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 1 para 6.

20 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 6.

21 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 7.

22 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 8.

23 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 9.

24 'Pleasure craft' has the meaning assigned to it by the Docks Regulations 1988, SI 1988/1655, reg 2(1) (see PARA 706 note 1): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1).

25 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 10.

26 As to the meaning of 'agricultural activity' see PARA 370 note 27.

27 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 11. 'Veterinary surgery' has the meaning assigned to it by the Veterinary Surgeons Act 1966 s 27 (ie the art and science of veterinary surgery and medicine and, without prejudice to the generality of the foregoing, including (1) the diagnosis of diseases in, and injuries to, animals including tests performed on animals for diagnostic purposes; (2) the giving of advice based upon such diagnosis; (3) the medical or surgical treatment of animals; and (4) the performance of surgical operations on animals): Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 2(1).

28 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 12.

29 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 13.

30 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 14.

31 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(1), Sch 1 para 15.

32 The regulations made under the Health and Safety at Work etc Act 1974 s 18(2) (see the text and notes 1-31). As to the Secretary of State see PARA 349.

33 Health and Safety at Work etc Act 1974 s 18(4)(a).

34 Health and Safety at Work etc Act 1974 s 18(4)(b) (amended by SI 2008/960). Before the Executive gives such guidance it must consult the local authorities: Health and Safety at Work etc Act 1974 s 18(4A) (s 18(4A), (4B) added by SI 2008/960). It is the duty of the Executive and the local authorities (1) to work together to

establish best practice and consistency in the enforcement of the relevant statutory provisions; (2) to enter into arrangements with each other for securing cooperation and the exchange of information in connection with the carrying out of their functions with regard to the relevant statutory provisions; and (3) from time to time to review those arrangements and to revise them when they consider it appropriate to do so: Health and Safety at Work etc Act 1974 s 18(4A) (as so added). Where any authority other than the Executive or a local authority is by any of the relevant statutory provisions made responsible for the enforcement of any of those provisions to any extent, it is the duty of that authority to make similar adequate arrangements and, except where that authority is the Office of Rail Regulation, to perform the duty in accordance with such guidance as the Executive may give to the authority: s 18(5) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 8, Sch 18; the Railways Act 2005 ss 2, 59(6), Sch 3 para 10(3), Sch 13 Pt 1; and SI 2008/960).

35 Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 5(1). A transfer may be made only by agreement between the enforcing authority which has the current responsibility and the authority to which it proposed to transfer it: see reg 5(2); and PARA 367. As to the assignment of responsibility in cases of uncertainty see reg 6; and PARA 367.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(4) LOCAL AUTHORITIES/373. Duties and powers under the Factories Act 1961.

### 373. Duties and powers under the Factories Act 1961.

The local authorities entrusted with functions under the Factories Act 1961 are (1) in England, the district councils<sup>1</sup> and, as respects the City of London, the Common Council<sup>2</sup>; and (2) in Wales, the county councils or county borough councils<sup>3</sup>. The proper officer<sup>4</sup> of every such council is stated to be, in his annual report to the council, under a duty to report specifically on and to furnish prescribed particulars as to the performance by the council of its administrative functions under the Factories Act 1961<sup>5</sup>, and under a duty to send to the Secretary of State<sup>6</sup> a copy of the report, or so much of it as deals with those matters<sup>7</sup>. However, although this provision has not been repealed, the only function of district councils formerly remaining under the 1961 Act, which was a duty to provide lists of outworkers, was removed in 1995<sup>8</sup> and it seems that local authorities no longer have specific functions under that Act.

1 'District council' means, in relation to England, the council of a district: Factories Act 1961 s 176(1) (amended by the Local Government Act 1972 s 272(1), Sch 30). As to district councils see **LOCAL GOVERNMENT**.

2 Factories Act 1961 s 176(8) (amended by the London Government Act 1963 s 93(1), Sch 18 Pt II). As to the Common Council of the City of London see **LONDON GOVERNMENT**.

3 Factories Act 1961 s 176(8A) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 18).

4 I.e. the officer described in the Factories Act 1961 as the 'medical officer of health': but see the Local Government Act 1972 s 251(1), Sch 29 para 4(1)(a).

5 I.e. prescribed particulars with respect to matters under the Factories Act 1961 Pt VIII (ss 133-134) (now repealed).

6 As to the Secretary of State see **PARA 349** et seq.

7 See the Factories Act 1961 s 153(1)(a) (amended by SI 1977/746). If any person who, in pursuance of powers conferred by the Factories Act 1961 s 153, is admitted into any factory or place discloses to any person any information obtained by him in the factory or place with regard to any manufacturing process or trade secret he is, unless the disclosure was made in the performance of his duty, guilty of an offence: s 154 (amended by SI 1974/1941). The Factories Act 1961 s 154 does not apply if the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) **PARA 583** note 2), and the information is not held by the authority on behalf of another person: Factories Act 1961 s 154A (added by SI 2004/3363). As to restrictions on disclosure of information see also **PARA 382**.

8 See the Health and Safety (Repeals and Revocations) Regulations 1995, SI 1995/3234, reg 2(1), Sch 1, Pt I.

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**374. Duties and functions under the Offices, Shops and Railway Premises Act 1963.**

The particular activities in respect of which the local authority is the enforcing authority under the Offices, Shops and Railway Premises Act 1963<sup>1</sup>, and those in relation to which the Health and Safety Executive<sup>2</sup> is the enforcing authority, are the same as those under the Health and Safety at Work etc Act 1974 and are detailed above<sup>3</sup>.

1 As to premises to which the Offices, Shops and Railway Premises Act 1963 applies see PARAS 327-331.

2 As to the Health and Safety Executive see PARA 361 et seq.

3 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, regs 3, 4, Schs 1, 2; and PARAS 370, 372.

There is still an obligation on local authorities which discharged the functions of fire authorities under the Fire Services Act 1947 (see **FIRE SERVICES**) and made reports to the Secretary of State under the Offices, Shops and Railway Premises Act 1963 s 60(1) (repealed) to keep reports made before 1 January 1977 at their offices and open for inspection at reasonable hours free of charge and to supply copies on payment of a reasonable charge: see s 60(2) (repealed subject to this saving); and the Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976, SI 1976/2005, reg 2, Schedule.

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## **(5) INSPECTORS**

### **375. Appointment of inspectors.**

Every enforcing authority<sup>1</sup> may appoint as inspectors<sup>2</sup> (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility<sup>3</sup>, and may terminate any appointment so made<sup>4</sup>. Every such appointment must be made by an instrument in writing<sup>5</sup> specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed<sup>6</sup>; and an inspector in right of such appointment is (1) entitled to exercise only such of those powers as are so specified<sup>7</sup>; and (2) entitled to exercise them only within the field of responsibility of the authority which appointed him<sup>8</sup>.

Where a claim has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it<sup>9</sup>.

It is an offence for a person falsely to pretend to be an inspector<sup>10</sup>.

1 As to the meaning of 'enforcing authority' see PARA 352 note 2.

2 'Inspector' means a person appointed under the Health and Safety at Work etc Act 1974 s 19 (see the text to notes 4-8): s 53(1). References in any provision of an enactment, instrument or other document to (1) an inspector appointed under the Factories Act 1961; and (2) the inspector for the district, the superintending inspector for the division or the chief inspector, must be construed, except where the context otherwise requires or where the reference is otherwise expressly amended, as references respectively to (a) an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19; and (b) an inspector so appointed who is authorised to act for the purposes of the provision in question: see the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 6. See also the Factories Act 1961 s 176(1) (definition substituted by SI 1974/1941). These regulations do not affect the validity of anything done under any provision of an enactment or instrument repealed or modified by them before they came into operation; and anything which at that time is in process of being done for the purpose of that provision (including in particular any legal proceedings) by or in relation to (i) an inspector appointed under the Factories Act 1961; and (ii) the inspector for the district, the superintending inspector for the division or the chief inspector may, so far as may be necessary for the purposes of or in consequence of the provisions of the regulations, be continued, respectively, by or in relation to (A) an inspector appointed by the Executive under the Health and Safety at Work etc Act 1974 s 19; and (B) an inspector so appointed who is authorised to act for the purposes of the provision in question: see the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 7(1). Without prejudice to the provisions of reg 7(1), any exemption, approval, authorisation, certificate, notice or direction granted or given or other thing whatsoever done, or having effect as if granted, given or done for the purposes of any provision modified by those regulations, if in force at their coming into operation, continues in force and has effect as if granted, given or done in accordance with that provision as so modified: reg 7(2).

Similar provisions apply to the functions of and to acts done by such inspectors in relation to the Offices, Shops and Railway Premises Act 1963 and to the continuance in force of exemptions, etc, made under it: see the Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974, SI 1974/1943, reg 4.

In relation to the Mines and Quarries Acts 1954 and 1969, 'inspector' means an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 as set out above; and references to a 'district inspector' are

references to the inspector so appointed for the purposes of carrying into effect the provisions of the Mines and Quarries Acts 1954 and 1969 in the district in which the mine is situated: Mines and Quarries Act 1954 s 182(1) (definition substituted by SI 1974/2013; and amended by SI 1999/2024). See also PARA 383.

In this title 'authorised inspector' means whichever of the above definitions is appropriate.

3 Any reference to an enforcing authority's field of responsibility is a reference to the field over which that authority's responsibility for the enforcement of those provisions extends for the time being: Health and Safety at Work etc Act 1974 s 18(7)(b). As to the relevant statutory provisions see PARA 302 note 24.

4 Health and Safety at Work etc Act 1974 s 19(1).

5 So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him (Health and Safety at Work etc Act 1974 s 19(3)) and an inspector must, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy of it (s 19(4)).

6 Health and Safety at Work etc Act 1974 s 19(2).

7 Health and Safety at Work etc Act 1974 s 19(2)(a).

8 Health and Safety at Work etc Act 1974 s 19(2)(b).

9 Health and Safety at Work etc Act 1974 s 26. Section 26 refers to the bringing of an 'action'; as to the replacement in civil proceedings of the term 'action' by the term 'claim' see **CIVIL PROCEDURE** vol 11 (2009) PARA 18.

10 Health and Safety at Work etc Act 1974 s 33(1)(n). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 33(2), Sch 3A para 1 Table (s 33(2) substituted and Sch 3A added by the Health and Safety (Offences) Act 2008 s 1, Sch 1). As to the standard scale see PARA 853 note 29. As to offences and penalties generally see PARA 852 et seq.

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### 376. Powers of inspectors.

The following powers<sup>1</sup> may be exercised by an inspector for the purpose of carrying into effect any of the relevant statutory provisions<sup>2</sup> within the field of responsibility<sup>3</sup> of the enforcing authority<sup>4</sup> which appointed him<sup>5</sup>:

- 119 (1) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) he may enter any premises<sup>6</sup> which he has reason to believe it is necessary for him to enter for the purpose mentioned above<sup>7</sup>;
- 120 (2) he may take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty<sup>8</sup>;
- 121 (3) on entering any premises<sup>9</sup>, he may take with him (a) any other person duly authorised by the inspector's enforcing authority<sup>10</sup>, and (b) any equipment or materials required for any purpose for which the power of entry is being exercised<sup>11</sup>;
- 122 (4) he may make such examination and investigation as may in any circumstances be necessary for the purpose mentioned above<sup>12</sup>;
- 123 (5) as regards any premises which he has power to enter, he may direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation<sup>13</sup>;
- 124 (6) he may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any such examination or investigation<sup>14</sup>;
- 125 (7) he may take samples of any articles or substances<sup>15</sup> found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises<sup>16</sup>;
- 126 (8) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, he may cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned above)<sup>17</sup>;
- 127 (9) in the case of any such article or substance, he may take possession of it and detain it for as long as is necessary for all or any of specified purposes<sup>18</sup>;
- 128 (10) he may require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers<sup>19</sup>;
- 129 (11) he may require the production of, inspect and take copies of, or of any entry in, (a) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept<sup>20</sup>; and (b) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation<sup>21</sup>;
- 130 (12) he may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him<sup>22</sup>; and

131 (13) he may exercise any other power which is necessary for the purpose mentioned above<sup>23</sup>.

If authorised in that behalf by the enforcing authority which appointed him, an inspector may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under any of the relevant statutory provisions<sup>24</sup>.

An inspector's failure to identify a risk does not, unless he has been careless or unreasonable in the exercise of his discretionary powers, give rise to a civil claim against him or against the Health and Safety Executive as being vicariously liable for such failure<sup>25</sup>. Further, it has been held that an inspector, when deciding what, if any, exercise of his powers he should make in respect of a particular business activity, does not owe a duty of care to the proprietor of that business<sup>26</sup>. However, in interim proceedings arising out of a railway accident, the Court of Appeal held that although there would normally, in the absence of clear words in the relevant statute or regulations, be no duty of care owed to passengers or railway workers by a regulatory body such as the Health and Safety Executive, it was possible that on the particular facts a court could find at trial that there was a duty in tort owed to third parties<sup>27</sup>.

1 As to the power to serve an improvement notice see PARA 377; as to the power to serve a prohibition notice see PARA 378; and as to the power to deal with a cause of imminent danger see PARA 380.

2 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

3 As to the field of responsibility see PARA 375 note 3.

4 As to the meaning of 'enforcing authority' see PARA 352 note 2.

5 Health and Safety at Work etc Act 1974 s 20(1). As to the appointment of inspectors see PARA 375. The exercise of the powers is subject to the provisions of s 19 (see PARA 375) and of s 20 itself: s 20(1). It is an offence intentionally to obstruct an inspector in the exercise or performance of his powers or duties: Health and Safety at Work etc Act 1974 s 33(1)(h). As to the penalty see PARA 853. As to offences and penalties generally see PARA 852 et seq. As to restrictions on the disclosure of information obtained as the result of the exercise of powers conferred by s 20 see PARA 382.

6 As to the meaning of 'premises' see PARA 302 note 6.

7 Health and Safety at Work etc Act 1974 s 20(2)(a).

8 Health and Safety at Work etc Act 1974 s 20(2)(b). As to the powers of constables generally see **POLICE**.

9 He by virtue of the Health and Safety at Work etc Act 1974 s 20(2)(a) (see the text to notes 6-7): s 20(2)(c).

10 Health and Safety at Work etc Act 1974 s 20(2)(c)(i). This power is without prejudice to that contained in s 20(2)(b) (see the text to note 8): s 20(2)(c).

11 Health and Safety at Work etc Act 1974 s 20(2)(c)(ii). See note 10.

12 Health and Safety at Work etc Act 1974 s 20(2)(d).

13 Health and Safety at Work etc Act 1974 s 20(2)(e).

14 Health and Safety at Work etc Act 1974 s 20(2)(f).

15 As to the meaning of 'substances' see PARA 302 note 7.

16 Health and Safety at Work etc Act 1974 s 20(2)(g). The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of such samples, including provision as to the way in which they are to be dealt with: s 20(3).

17 Health and Safety at Work etc Act 1974 s 20(2)(h). Where an inspector proposes to exercise this power in the case of an article or substance found in any premises, he must, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in



that person's presence would be prejudicial to the safety of the state: s 20(4). Before exercising that power in the case of any article or substance, an inspector must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power: s 20(5). Failure to give a responsible person a sample of dangerous material taken under s 20(2)(h) or (i) (see note 18) may result in the material taken or analysis of it being inadmissible in evidence, even though if the inspector had exercised his general power under s 20(2)(g) he need not have left a sample: *Skinner v John G McGregor (Contractors) Ltd* 1977 SLT 83, Sh Ct (overruled on other grounds by *Laws v Keane* [1982] IRLR 500).

18 Health and Safety at Work etc Act 1974 s 20(2)(i). The specified purposes are (1) to examine the article or substance and do to it anything which he has power to do under s 20(2)(h) (see the text to note 17); (2) to ensure that it is not tampered with before his examination is completed; and (3) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under s 21 or s 22 (see PARAS 377-378): s 20(2)(i).

Where under this power an inspector takes possession of any article or substance found in any premises, he must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector must, if it is practicable for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it: s 20(6).

19 Health and Safety at Work etc Act 1974 s 20(2)(j). No answer given by a person in pursuance of such a requirement is admissible in evidence against that person or the spouse or civil partner of that person in any proceedings: s 20(7) (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 49). It is an offence to contravene any such requirement (Health and Safety at Work etc Act 1974 s 33(1)(e)) or to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of s 20(2) require an answer (s 33(1)(f)). As to the penalties see PARA 853. As to the meaning of 'contravene' see PARA 369 note 6.

On its true construction, s 20(2)(j) permits an inspector to seek to obtain information in writing as well as during a face to face interview and is to be construed widely: see *R (on the application of Wandsworth London Borough Council) v South Western Magistrates' Court* [2003] EWHC 1158 (Admin), [2003] ICR 1287, [2003] All ER (D) 08 (May). As to the extent of an inspector's powers see also eg *Walkers Snack Foods Ltd v Coventry City Council* [1998] 3 All ER 163, 96 LGR 517 (a case concerning the investigation powers of environmental health officers).

20 Health and Safety at Work etc Act 1974 s 20(2)(k)(i).

21 Health and Safety at Work etc Act 1974 s 20(2)(k)(ii). It is an offence to contravene any such requirement (s 33(1)(e)); but nothing in s 20 is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure in proceedings in the High Court: s 20(8). As to the penalty see PARA 853. As to legal professional privilege see **CIVIL PROCEDURE** vol 11 (2009) PARA 558 et seq.

22 The power conferred by the Health and Safety at Work etc Act 1974 s 20: s 20(2)(l). It is an offence to contravene any such requirement: s 33(1)(e). As to the penalty see note 19.

23 The power under the Health and Safety at Work etc Act 1974 s 20(1) (see the text to note 5): s 20(2)(m).

24 Health and Safety at Work etc Act 1974 s 39(1); and see *Campbell v Wallsend Slipway and Engineering Co Ltd* [1978] ICR 1015. As to offences and penalties generally see PARA 852 et seq.

25 See *Fletcher v Bradford City Football Club* (unreported, 23 February 1987), QBD. As to vicarious liability see generally **NEGLIGENCE; TORT** vol 97 (2010) PARA 429. As to the Health and Safety Executive see PARA 361 et seq.

26 See *Harris v Evans* [1998] 3 All ER 522, CA, applying *X (minors) v Bedfordshire County Council, M (a minor) v Newham London Borough Council, E (a minor) v Dorset County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL. Cf, however, *Perrett v Collins* [1998] 2 Lloyd's Rep 255, [1999] PNLR 77, CA (an inspector who provides a certificate of fitness to fly under the regulatory regime provided by the Civil Aviation Act 1992 owes a common law duty of care; applied in *Watson v British Boxing Board of Control Ltd* [2001] QB 1134, [2001] 1 WLR 1256, [2000] All ER (D) 2352, CA).

27 See *Thames Trains Ltd v Health and Safety Executive* [2003] EWCA Civ 720, 147 Sol Jo LB 661, [2003] All ER (D) 310 (May). Cf also *Kane v New Forest District Council* [2001] EWCA Civ 878, [2001] 3 All ER 914, [2002] 1 WLR 312 (a town and country planning case, where it was held that where a planning authority had permitted or required the construction of a foreseeably dangerous footpath, or if it assumed responsibility for the removal of the danger, it was arguably liable for the personal injury of the person who was injured).



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### 377. Improvement notices.

If an inspector<sup>1</sup> is of the opinion that a person (1) is contravening<sup>2</sup> one or more of the relevant statutory provisions<sup>3</sup>; or (2) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated<sup>4</sup>, he may serve<sup>5</sup> on him an improvement notice stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion<sup>6</sup>, giving particulars of the reasons why he is of that opinion<sup>7</sup>, and requiring<sup>8</sup> that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal<sup>9</sup> against the notice can be brought) as may be specified in the notice<sup>10</sup>.

A notice may, but need not, include directions as to the measures to be taken to remedy any contravention or matter to which it relates<sup>11</sup>, and any such directions may be framed (a) to any extent by reference to any approved code of practice<sup>12</sup>; and (b) so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter<sup>13</sup>.

Before an inspector serves, in connection with any premises<sup>14</sup> used or about to be used as a place of work, a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he must consult the fire and rescue authority<sup>15</sup>.

There is provision for appeal against an improvement notice<sup>16</sup>. A notice (other than one which imposes requirements or a prohibition solely for the protection of people at work) must be registered<sup>17</sup>.

Crown improvement notices have already been discussed<sup>18</sup>.

1 As to the meaning of 'inspector' see PARA 375 note 2.

2 As to the meaning of 'contravening' see PARA 369 note 6.

3 See the Health and Safety at Work etc Act 1974 s 21(a). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

4 See the Health and Safety at Work etc Act 1974 s 21(b).

5 As to the service of notices see PARAS 388-389.

6 The notice should identify the contravention by reference to the particular paragraph in the relevant subsection in the Health and Safety at Work etc Act 1974 s 2 (see PARA 421) or, if not so identifiable, give particulars of it. Failure to do so may result in the notice being quashed (as in a case where an inspector gave it as his opinion that there was breach of duty under s 2(1) without giving such particulars): *West Bromwich Building Society v Townsend* [1983] ICR 257, [1983] IRLR 147. The issuing of an improvement notice is not an appropriate procedure for a test case; the notice should be directed to a contravention at particular premises: *West Bromwich Building Society v Townsend* [1983] ICR 257, [1983] IRLR 147.

7 If an employment tribunal considering an appeal against an improvement notice considers it to be vague, it has jurisdiction to redraft the notice: *Chrysler UK Ltd v McCarthy* [1978] ICR 939, DC.

8 It is an offence for a person to contravene any requirement imposed by an improvement notice, including a notice as modified on appeal: Health and Safety at Work etc Act 1974 s 33(1)(g). As to the penalty see PARA 853. It is no defence that the accused has complied with the notice as far as was reasonably practicable: *Deary v Mansion Hide Upholstery Ltd* [1983] ICR 610, [1983] IRLR 195, DC. Matters of practicability should be raised at

an appeal: *Deary v Mansion Hide Upholstery Ltd* [1983] ICR 610, [1983] IRLR 195, DC, per Robert Goff LJ. As to what is reasonably practicable see PARA 417.

9 As to appeals see the Health and Safety at Work etc Act 1974 s 24; and PARA 379.

10 Health and Safety at Work etc Act 1974 ss 21, 53(1). Where such a notice which is not to take immediate effect has been served, (1) the notice may be withdrawn by an inspector at any time before the end of the period specified in it (ss 21, 23(5)(a)); and (2) that period may be extended or further extended by an inspector at any time when an appeal against the notice is not pending (s 23(5)(b)). A second improvement notice requiring further and different modifications will have to be justified by showing that the situation was nonetheless unsafe in spite of compliance with the first improvement notice and that the further modifications were required to render the situation safe: *R v Derby City Council, ex p Mercer* [1995] JPIL 134.

Where any of the relevant statutory provisions applies to a building or any matter connected with a building, and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice must not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if it were being newly erected, unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform: Health and Safety at Work etc Act 1974 s 23(3). As to building regulations see the Building Regulations 2000, SI 2000/2531; and **BUILDING** vol 4(2) (2002 Reissue) PARA 306 et seq. As to the court's power to order the cause of an offence to be remedied see PARA 857.

11 Health and Safety at Work etc Act 1974 s 23(1), (2).

12 Health and Safety at Work etc Act 1974 s 23(2)(a). As to the meaning of 'code of practice' see PARA 302 note 9; and see PARA 426.

13 Health and Safety at Work etc Act 1974 s 23(2)(b). See *BT Fleet Ltd v McKenna* [2005] EWHC 387 (Admin), [2005] All ER (D) 284 (Mar).

14 As to the meaning of 'premises' see PARA 302 note 6.

15 Health and Safety at Work etc Act 1974 s 23(4) (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 44). 'Fire and rescue authority', in relation to premises, means (1) where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, applies to the premises, the enforcing authority within the meaning given by art 25; (2) in any other case, the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area where the premises are (or are to be) situated: Health and Safety at Work etc Act 1974 s 23(4) (as so amended; further amended by SI 2005/1541). See further **FIRE SERVICES**. As to the provision of means of escape in case of fire see PARA 660.

16 See PARA 379.

17 In a public register maintained by an enforcement authority: see the Environment and Safety Information Act 1988 ss 1, 2(1), (3), Schedule (Schedule amended by the Fire and Rescue Services Act 2004 Sch 1 para 67; and by SI 2005/1541).

18 See PARA 304.

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### 378. Prohibition notices.

As regards activities to or in relation to which any of the relevant statutory provisions apply<sup>1</sup>, if an inspector<sup>2</sup> is of the opinion that, as carried on or likely to be carried on by or under the control of any person, the activities involve or, as the case may be, will involve a risk of serious personal injury<sup>3</sup>, the inspector may serve<sup>4</sup> on that person a prohibition notice<sup>5</sup>.

Such a notice must (1) state that the inspector is of that opinion<sup>6</sup>; (2) specify the matters which in his opinion give or, as the case may be, will give rise to the risk<sup>7</sup>; (3) where in his opinion any of those matters involves or, as the case may be, will involve a contravention<sup>8</sup> of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion<sup>9</sup>; and (4) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice and any associated contraventions of provisions so specified have been remedied<sup>10</sup>. There is provision for appeal against a prohibition notice<sup>11</sup>.

A prohibition notice, other than one imposing a prohibition solely for the protection of people at work, must be registered<sup>12</sup>.

Crown prohibition notices have already been discussed<sup>13</sup>.

1 Health and Safety at Work etc Act 1974 s 22(1) (amended by the Consumer Protection Act 1987 s 36, Sch 3 para 2). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 As to the meaning of 'inspector' see PARA 375 note 2.

3 'Personal injury' includes any disease and any impairment of a person's physical or mental condition: Health and Safety at Work etc Act 1974 s 53(1).

4 As to the service of notices see PARAS 388-389.

5 Health and Safety at Work etc Act 1974 ss 22(2), 53(1) (s 22(2) amended by the Consumer Protection Act 1987 Sch 3 para 2). The supplementary provisions of the Health and Safety at Work etc Act 1974 s 23(2), (4), (5) (see PARA 377 text and notes 10-15) apply also to prohibition notices: see s 23(1). There is also power to deal with an article or substance which is a cause of imminent danger: see PARA 380.

For a notice to be issued the risk need not be imminent: *Tesco v Kippax* (COIT No 7605, HSIB 180 p 8). In any appeal the burden is on the inspector to show on a balance of probabilities there was the relevant risk whereupon the burden falls on the employer to show all that was reasonably practicable was done to avoid it: *Readmans v Leeds City Council* [1993] COD 419. Where activities are already suspended prior to the service of a prohibition notice, all the surrounding circumstances and the reason for the suspension are to be considered in determining whether the activities are nevertheless being 'carried on' for the purposes of the Health and Safety at Work etc Act 1974 s 22: *Railtrack plc v Smallwood* [2001] EWHC 78 (Admin), [2001] ICR 714, [2001] All ER (D) 103 (Jan) (in this case the notice was upheld notwithstanding assurances that the activities would not be resumed).

6 Health and Safety at Work etc Act 1974 s 22(3)(a).

7 Health and Safety at Work etc Act 1974 s 22(3)(b).

8 As to the meaning of 'contravention' see PARA 369 note 6.

9 Health and Safety at Work etc Act 1974 s 22(3)(c).

10 Health and Safety at Work etc Act 1974 s 22(3)(d). A direction in such a notice takes effect at the end of the period specified in the notice, or, if the notice so declares, immediately: s 22(4) (substituted by the Consumer Protection Act 1987 Sch 3 para 2). The time taken to perform a particular safety operation will be taken into account when determining the length of that specified period: see eg *Otterburn Mill Ltd v Bulman (Inspector of Factories)* [1975] IRLR 223, IT.

It is an offence triable either summarily or on indictment for a person to contravene a prohibition imposed by such a notice (including a notice as modified on appeal): Health and Safety at Work etc Act 1974 s 33(1)(g). As to penalties and offences generally see PARA 852 et seq.

11 See PARA 379.

12 Is in a public register maintained by an enforcement authority: see the Environment and Safety Information Act 1988 ss 1, 2(1), (3), Schedule (Schedule amended by the Fire and Rescue Services Act 2004 Sch 1 para 67; and by SI 2005/1541).

13 See PARA 304.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/2. ADMINISTRATION/(5) INSPECTORS/379. Appeals.

### **379. Appeals.**

A person on whom an improvement notice or a prohibition notice<sup>1</sup> is served may, within such period from the date of its service as may be prescribed<sup>2</sup>, appeal to an employment tribunal<sup>3</sup>, and on such appeal the tribunal may either cancel or affirm the notice<sup>4</sup> and, if it affirms it, may do so either in its original form or with such modifications as it may in the circumstances think fit<sup>5</sup>.

Where such an appeal is brought against a notice within the period allowed<sup>6</sup>, then (1) in the case of an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until its withdrawal<sup>7</sup>; and (2) in the case of a prohibition notice, the bringing of the appeal has the like effect if, but only if, on the application of the appellant, the tribunal so directs, and then only from the giving of the direction<sup>8</sup>.

An appellant may withdraw all or part of the appeal at any time, either orally at a hearing or in writing<sup>9</sup>. To withdraw an appeal or part of one in writing the appellant must inform the employment tribunal office in writing of the appeal or the parts of it which are to be withdrawn<sup>10</sup>. The secretary must inform all other parties of the withdrawal<sup>11</sup>. Withdrawal takes effect on the date on which the employment tribunal office (in the case of written notifications) or the tribunal or employment judge receives notice of it and where the whole appeal is withdrawn proceedings are brought to an end against the respondent on that date and the tribunal or employment judge must dismiss the appeal<sup>12</sup>.

A tribunal or employment judge may make an order (a 'costs order') that a party (the 'paying party') make a payment in respect of the costs<sup>13</sup> incurred by another party (the 'receiving party')<sup>14</sup>. The tribunal or employment judge must have regard to the paying party's ability to pay when considering whether it or he is to make a costs order or how much that order should be<sup>15</sup>.

1 As to improvement notices see PARA 377, and as to prohibition notices see PARA 378.

2 As to the meaning of 'prescribed' see PARA 305 note 10. The Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 (set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, regs 1(1)(d), 16(3)(b), Sch 4 (reg 1 substituted by SI 2004/2351; and amended by SI 2005/8965) prescribe a time limit of 21 days from the date of service on the appellant of the notice appealed against, though this time limit may be extended by the tribunal where it is satisfied that it was not reasonably practicable for an appeal to be or to have been brought within that time: see the Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 4(1), (2). The rules in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 4 modify the general rules in Sch 1 (the Employment Tribunals Rules of Procedure 2004: see regs 1(1)(a), 16(1) (reg 1 as so substituted and amended; reg 16(1) amended by SI 2004/2351)) in relation to appeals against improvement and prohibition notices: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 1.

For these purposes, 'tribunal' means an employment tribunal established in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 5 (see **EMPLOYMENT**), and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President, Vice President or a regional employment judge: Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 2(1) (numbered as such by SI 2006/680; definition amended by SI 2008/2683). 'President' means the person appointed by the Lord Chancellor or nominated by the Lord Chief Justice to discharge for the time being the functions of the President of Employment Tribunals (England and Wales): Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 2(1)

(as so numbered; definition amended by SI 2006/680). 'Vice President' means a person who has been appointed to the position of Vice President in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 7 or who has been nominated to discharge the functions of the Vice President in accordance with reg 7: reg 2(1) (as so numbered). 'Regional employment judge' means a member of the panel of employment judges who has been appointed to the position of regional employment judge in accordance with reg 6 or who has been nominated to discharge the functions of a regional employment judge in accordance with reg 6: reg 2(1) (as so numbered). 'Employment judge' has the meaning given in the Employment Tribunals Act 1996 s 3A (see **EMPLOYMENT**): Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 2(1) (as so numbered; definition added by SI 2008/2683). As to employment tribunals see generally **EMPLOYMENT** vol 41 (2009) PARAS 1363 et seq, 1406 et seq.

Subject to the provisions of the Employment Tribunals Rules of Procedure 2004 and any practice directions, a tribunal or an employment judge may regulate its or his own procedure: r 60(1) (amended by SI 2008/2683); Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 rr 7(1), 11, 12 (r 7(1) amended by SI 2008/2683). The employment judge may, if he thinks fit, make an order (1) as to the manner in which the proceedings are to be conducted, including any time limit to be observed; (2) that a party provide additional information; (3) requiring the attendance of any person in Great Britain either to give evidence or to produce documents or information; (4) requiring any person in Great Britain to disclose documents or information to a party or to allow a party to inspect such material as might be ordered by a county court; (5) extending any time limit, whether or not expired (subject to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 1 rr 4(4), 11(2), 25(5), 30(5), 33(1), 35(1), 38(7) and 42(5), and to Sch 2 r 3(4)); (6) requiring the provision of written answers to questions put by the tribunal or employment judge; (7) staying the whole or part of the appeal; (8) that different appeals be considered together; (9) postponing or adjourning any hearing; (10) varying or revoking other orders; (11) giving notice to the parties of a pre-hearing review or the hearing; (12) giving notice under r 19; (13) giving leave to amend a notice of appeal; (14) that a witness statement be prepared or exchanged; (15) as to the use of experts or interpreters in the proceedings: Sch 1 r 10(1), (2) (amended by SI 2008/2683 and SI 2008/3240). As to the meaning of 'Great Britain' see PARA 305 note 7.

If the parties agree in writing upon the terms of any decision to be made by the tribunal or employment judge, the employment judge may, if he thinks fit, decide accordingly: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 7(2) (amended by SI 2008/2683).

3 Health and Safety at Work etc Act 1974 s 24(1), (2) (s 24(2) amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). Where a local authority has been negligently advised by an inspector to issue such notices, the appropriate remedy is an appeal to an employment tribunal and not a claim in negligence; an inspector, when deciding what, if any, exercise of his powers he should make in respect of a particular business activity, does not owe a duty of care to the proprietor of that business: *Harris v Evans* [1998] 3 All ER 522, [1998] 1 WLR 1285, CA. In any appeal the burden is on the inspector to show on a balance of probabilities there was the relevant risk whereupon the burden falls on the employer to show all that was reasonably practicable was done to avoid it: *Readmans v Leeds City Council* [1993] COD 419.

A person wishing to appeal an improvement notice or a prohibition notice (the appellant) must do so by sending to the Employment Tribunal Office a notice of appeal, which must contain (1) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent; (2) the date of the improvement notice or prohibition notice appealed against and the address of the premises or the place concerned; (3) the name and address of the respondent; (4) details of the requirements or directions which are being appealed; and (5) the grounds for the appeal: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 3 (amended by SI 2004/2351). On receiving a notice of appeal the secretary must send a copy of the notice of appeal to the respondent and inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Employment Tribunal Office are to be sent: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 5.

One or more assessors may be appointed for the purposes of any such proceedings: Health and Safety at Work etc Act 1974 s 24(4) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). The President, Vice President or a regional employment judge may, if he thinks fit, appoint in accordance with the Health and Safety at Work etc Act 1974 s 24(4) a person having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal or employment judge as an assessor: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 8 (amended by SI 2008/2683).

4 The notice should identify the contravention by reference to the particular subsection in the Health and Safety at Work etc Act 1974 s 2 (see PARA 421) or, if not so identifiable, give particulars of it. Failure to do so may result in the notice being quashed (as in a case where an inspector gave it as his opinion that there was breach of duty under s 2(1) without giving such particulars): *West Bromwich Building Society v Townsend* [1983] ICR 257, [1983] IRLR 147. An improvement notice requiring eg that a cracked wash basin should be replaced will not be cancelled on the basis that the inspector ought not to have concerned himself with so small



a matter, or because many other employers also have cracked wash-basins: *South Surbiton Co-operative Society v Wilcox* [1975] IRLR 292, IT.

5 Health and Safety at Work etc Act 1974 s 24(2) (as amended: see note 3). The modification may consist of adding to the requirements of the notice (*Tesco Stores Ltd v Edwards* [1977] IRLR 120), but not so as to add allegations of breach of further statutory provisions (*British Airways Board v Henderson* [1979] ICR 77). Because a tribunal has the jurisdiction to redraft any notice it finds vague, it should not rule on the validity of such a notice before investigating the facts: *Chrysler UK Ltd v McCarthy* [1978] ICR 939, DC. For a case where the time period for complying with an improvement notice was extended see *Campion v Hughes (Inspector of Factories)* [1975] IRLR 291, IT; for a similar case relating to a prohibition notice see *Otterburn Mill Ltd v Bulman (Inspector of Factories)* [1975] IRLR 223, IT. For a case where an improvement notice was upheld without modification see *Belhaven Brewery Co Ltd v Mclean (Inspector of Factories)* [1975] IRLR 370, IT. An improvement notice containing a technical defect in its wording was affirmed with the necessary technical modifications in *TC Harrison (Newcastle-under-Lyme) Ltd v Ramsey (Inspector)* [1976] IRLR 135, IT (where it was held that the financial position of the person against whom an improvement notice has been issued is irrelevant in determining whether or not it should be affirmed). For examples where an improvement notice was cancelled on appeal see *AC Davis & Sons v Leeds City Council Environmental Health Department* [1976] IRLR 282, IT (shared sanitary facilities); *Associated Dairies Ltd v Hartley* [1979] IRLR 171, IT (it is doubtful, however, if these cases would now be decided in the same way on their facts). An undertaking by the manager of a company to take additional precautions was insufficient for a prohibition notice to be suspended in *Grovehurst Energy Ltd v Strawson* (COIT No 5035, HSIB 180 p 9).

A failure to include the statutory proviso of reasonable practicability in respect of the measures to be taken to remedy a contravention does not render a notice invalid so as to deprive the tribunal of jurisdiction to consider the factual basis of the notice: see *Kitching v Gateway Foodmarkets Ltd* (CO/766/86) (24 October 1988, unreported), QBD.

6 It is allowed by the Health and Safety at Work etc Act 1974 s 24(2): see the text to notes 1-4.

7 Health and Safety at Work etc Act 1974 s 24(3)(a).

8 Health and Safety at Work etc Act 1974 s 24(3)(b). When an appeal is brought against a prohibition notice, and an application is made by the appellant under s 24(3)(b) for a direction suspending the operation of the prohibition notice until the appeal is determined or withdrawn, the application must be presented to the employment tribunal office in writing and must include (1) the case number of the appeal, or if there is no case number sufficient details to identify the appeal; and (2) the grounds on which the application is made: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 6(1). The secretary must send a copy of the application to the respondent as soon as practicable after it has been received and must inform the respondent that he has the opportunity to submit representations in writing if he so wishes, within a specified time but not less than seven days: r 6(2). The employment judge must consider the application and any representations submitted by the respondent, and may (a) order that the application should not be determined separately from the full hearing of the appeal; (b) order that the operation of the prohibition notice be suspended until the appeal is determined or withdrawn; (c) dismiss the appellant's application; or (d) order that the application be determined at a hearing (held in accordance with the Employment Tribunals Rules of Procedure 2004 r 26): Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 6(3) (amended by SI 2008/2683). The employment judge must give reasons for any decision made under heads (a)-(d) or made following a hearing ordered under head (d) above: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 6(4) (amended by SI 2008/2683 and SI 2008/3240). A decision made under heads (a)-(d) or made following a hearing ordered under head (d) above is to be treated as a decision which may be reviewed upon the application of a party under the Employment Tribunals Rules of Procedure 2004 r 34: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 6(5) (amended by SI 2008/3240).

9 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 9(1).

10 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 9(2).

11 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 9(3).

12 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 9(3) (amended by SI 2008/2683).

13 For these purposes 'costs' means fees, charges, disbursements or expenses incurred by or on behalf of a party in relation to the proceedings: Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 10(2) (amended by SI 2005/1865).

14 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 10(1) (amended by SI 2008/2683). The amount of a costs order against the paying party can be determined in the following ways: (1) the tribunal may specify the sum which the party must pay to the receiving party, provided that sum does not exceed £10,000; (2) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed; (3) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the second party with the amount to be paid being determined by way of detailed assessment in a county court in accordance with the Civil Procedure Rules (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq): Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 10(2). For the avoidance of doubt, the amount of a costs order made under either head (2) or (3) above may exceed £10,000: r 10(5) (amended by SI 2008/3240). Costs were awarded against the appellants in eg *Nico Manufacturing Co Ltd v Hendry (Inspector of Factories)* [1975] IRLR 225, IT.

15 Employment Tribunals (Health and Safety-Appeals against Improvement and Prohibition Notices) Rules of Procedure 2004 r 10(4) (amended by SI 2008/2683).

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### **380. Causes of imminent danger.**

In the case of any article or substance<sup>1</sup> found by an inspector<sup>2</sup> in any premises<sup>3</sup> which he has power to enter<sup>4</sup>, where he has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury<sup>5</sup>, he may seize it and cause it to be rendered harmless, whether by destruction or otherwise<sup>6</sup>. As soon as may be after any article has been seized and rendered harmless, the inspector must (1) prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him<sup>7</sup>; (2) give<sup>8</sup> a signed copy of the report to a responsible person at the premises where the article or substance was found by him<sup>9</sup>; and (3) unless that person is the owner of the article or substance, serve<sup>10</sup> a signed copy of the report on the owner<sup>11</sup>.

1 As to the meaning of 'substance' see PARA 302 note 7.

2 As to the meaning of 'inspector' see PARA 375 note 2.

3 As to the meaning of 'premises' see PARA 302 note 6.

4 As to the powers of entry of inspectors see PARA 376.

5 As to the meaning of 'personal injury' see PARA 378 note 3.

6 Health and Safety at Work etc Act 1974 s 25(1). Before any article that forms part of a batch of similar articles, or any substance, is rendered harmless, if it is practicable for him to do so, the inspector must take a sample of it and give to a responsible person at the premises where it was found by him a portion of the sample marked in a manner sufficient to identify it: s 25(2).

7 Health and Safety at Work etc Act 1974 s 25(3).

8 As to the giving of documents see PARA 389.

9 Health and Safety at Work etc Act 1974 s 25(3)(a).

10 As to the service of notices see PARAS 388-389. See also note 11.

11 Health and Safety at Work etc Act 1974 s 25(3)(b). Where a signed copy of the report must also be served on the owner, and the inspector cannot after reasonable inquiry ascertain his name and address, the copy may be served on him by giving it to the person to whom a copy was given under s 25(3)(a) (see the text to note 9): s 25(3).

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**381. Power of officer of revenue and customs to detain articles and substances.**

A customs officer<sup>1</sup> may, for the purpose of facilitating the exercise or performance by any enforcing authority<sup>2</sup> or inspector<sup>3</sup> of any of the powers or duties of the authority or the inspector under any of the relevant statutory provisions<sup>4</sup>, seize any imported article or imported substance<sup>5</sup> and detain it for not more than two working days<sup>6</sup>.

1 'Customs officer' means an officer within the meaning of the Customs and Excise Management Act 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 417): Health and Safety at Work etc Act 1974 s 53(1) (definition added by the Consumer Protection Act 1987 s 36, Sch 3 para 7(b)).

2 See PARA 352 note 2.

3 See PARA 375 note 2.

4 As to the relevant statutory provisions see PARA 302 note 24.

5 As to the meaning of 'substance' see PARA 302 note 7.

6 Health and Safety at Work etc Act 1974 s 25A(1) (added by the Consumer Protection Act 1987 Sch 3 para 3). 'Two working days' is a reference to a period of 48 hours calculated from the time of seizure but disregarding so much of the period as falls on a Saturday, Sunday, Christmas Day, Good Friday, or bank holiday: Health and Safety at Work etc Act 1974 s 25A(3) (as so added). Anything seized and detained is to be dealt with during the period of its detention in such manner as the Commissioners for Revenue and Customs may direct: s 25A(2) (as so added; amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). It is an offence intentionally to obstruct a customs officer in the exercise of his powers under the Health and Safety at Work etc Act 1974 s 25A: s 33(1)(h) (amended by the Consumer Protection Act 1987 Sch 3 para 6). As to the penalty see PARA 853. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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### **382. Restrictions on disclosure of information.**

Subject to the following exceptions, no relevant information<sup>1</sup> may be disclosed without the consent of the person by whom it was furnished<sup>2</sup>. The exceptions are:

- 132 (1) disclosure of information to the Health and Safety Executive<sup>3</sup>, the Environment Agency<sup>4</sup>, the Scottish Environment Protection Agency<sup>5</sup>, a government department<sup>6</sup> or any enforcing authority<sup>7</sup>;
- 133 (2) without prejudice to head (1) above, disclosure by the recipient<sup>8</sup> of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions<sup>9</sup>;
- 134 (3) without prejudice to head (1) above, disclosure by the recipient of information to:
  - 5
  - 8. (a) an officer of a local authority<sup>10</sup> who is authorised by that authority to receive it;
  - 9. (b) an officer of a water undertaker, sewerage undertaker, water authority or water development board who is authorised by that undertaker, authority or board to receive it;
  - 10. (c) a constable authorised by a chief officer of police to receive it;
  - 6
- 135 (4) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case;
- 136 (5) disclosure of information for the purposes of any legal proceedings or any investigation or inquiry held as directed by the Commission<sup>11</sup>, or for the purposes of a report of any such proceedings or inquiry or of a special report<sup>12</sup> made as directed or authorised by the Executive;
- 137 (6) any other disclosure of information by the recipient, if the recipient is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000<sup>13</sup> and the information is not held by the authority on behalf of another person<sup>14</sup>.

A person to whom information is disclosed in pursuance of any of heads (1) to (5) above may not use the information other than for specified purposes<sup>15</sup>.

Subject to certain exceptions<sup>16</sup>, a person must not disclose any information obtained by him as a result of the exercise of any power of entry or inspection conferred on a person holding or assisting in an inquiry held or directed by the Executive<sup>17</sup> or as the result of the exercise by an inspector of his statutory powers<sup>18</sup> (including, in particular, any information with respect to any trade secret obtained by him in any premises<sup>19</sup> entered by him by virtue of any such power) except (i) for the purposes of his functions<sup>20</sup>; (ii) for the purposes of any legal proceedings or any investigation or inquiry held or directed by the Executive<sup>21</sup>, or for the purposes of a report of any such proceedings or inquiry or of a special report which the Executive has directed or authorised to be made<sup>22</sup>; (iii) in the case of information furnished in pursuance of a requirement imposed under an inspector's statutory powers<sup>23</sup>, with the consent of the person who furnished it<sup>24</sup>; or (iv) in any other case, with the consent of a person having responsibilities in relation to the premises where it was obtained<sup>25</sup>.

If a person discloses, otherwise than in the performance of his duty, or for the purpose of any legal proceedings including arbitrations, or for the purposes of a report of any such proceedings, any information obtained by him in any premises entered by him in exercise of powers conferred by or by virtue of the Offices, Shops and Railway Premises Act 1963<sup>26</sup>, he is guilty of an offence<sup>27</sup>. This does not apply, however, if the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 and the information is not held by the authority on behalf of another person<sup>28</sup>.

1 For these purposes, 'relevant information' means information obtained by a person under the Health and Safety at Work etc Act 1974 s 27(1) (see PARA 369) or furnished to any person under s 27A (see PARA 369), by virtue of s 43A(6) (see PARA 844) or in pursuance of a requirement imposed by any of the relevant statutory provisions: s 28(1)(a) (amended by the Consumer Protection Act 1987 s 36, Sch 3; and the Railways and Transport Safety Act 2003 s 105(2)).

2 Health and Safety at Work etc Act 1974 s 28(2).

3 In the Health and Safety at Work etc Act 1974 s 28(3) (see heads (1)-(5) in the text), any reference to the Executive, the Environment Agency, the Scottish Environment Protection Agency, a government department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it), and also, in the case of a reference to the Executive, includes a reference to (1) a person performing any functions of the Executive on its behalf by virtue of s 13(3) (see PARA 368); (2) an officer of a body which is so performing any such functions; and (3) an adviser appointed under s 13(7) (see PARA 368): s 28(4) (substituted by SI 2008/960). As to the Health and Safety Executive see PARA 361 et seq. As to the meaning of 'inspector' see PARA 375 note 2.

4 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. See also note 3.

5 As to references to the Scottish Environment Protection Agency see note 3.

6 As to references to a government department see note 3.

7 As to the meaning of 'enforcing authority' see PARA 352 note 2. See also note 3.

8 For these purposes, 'recipient', in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be: Health and Safety at Work etc Act 1974 s 28(1)(b).

9 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

10 For these purposes, references to a local authority include a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see **LOCAL GOVERNMENT**), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) and the London Fire and Emergency Planning Authority (see **LONDON GOVERNMENT**): Health and Safety at Work etc Act 1974 s 28(6) (substituted by the Local Government Act 1985 s 84, Sch 14 para 52; and amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 23; and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, Pt 2 para 32). The Broads Authority and every National Park authority are to be deemed to be local authorities for the purposes of the Health and Safety at Work etc Act 1974 s 28: s 28(10) (added by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 13; substituted by the Environment Act 1995 s 78, Sch 10 para 12). As to the meaning of 'local authority' generally see PARA 372 note 3.

11 Ie held by virtue of the Health and Safety at Work etc Act 1974 s 14(2) or (2A): see PARA 397.

12 Ie made by virtue of the Health and Safety at Work etc Act 1974 s 14(2) or (2A): see PARA 397.

13 See **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

14 Health and Safety at Work etc Act 1974 s 28(3) (amended by the Water Act 1989 s 190, Sch 25 para 46; the Environment Act 1995 s 120, Sch 22 para 30(6)(a), (b), (d), Sch 24; and by SI 2004/3363 and SI 2008/960; further amendments in relation to Scotland are not noted here).

15 Health and Safety at Work etc Act 1974 s 28(5) (amended by SI 2004/3363); note that this provision does not encompass head (6) in the text. The specified purposes are (1) in a case falling within head (1) in the text, a

purpose of the Executive or of the Environment Agency or of the Scottish Environment Protection Agency or of the government department in question, or the purposes of the enforcing authority in question in connection with the relevant statutory provisions, as the case may be; (2) in the case of information given to an officer of a body which is a local authority, a water undertaker, a sewerage undertaker, a water authority, a river purification board or a water development board, the purposes of the body in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the protection of the environment; and (3) in the case of information given to a constable, the purposes of the police in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the safety of the state: Health and Safety at Work etc Act 1974 s 28(5)(a)-(c) (amended by the Water Act 1989 s 190, Sch 25 para 46; the Environment Act 1995 s 120, Sch 22 para 30(6)(f), Sch 24; and by SI 2008/960; further amendments in relation to Scotland are not noted here). See also note 3.

16 Notwithstanding anything in the Health and Safety at Work etc Act 1974 s 28(7) (see the text and notes 18-25), a person who has obtained such information may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by him in the course of exercising any of the powers referred to in s 28(7): s 28(9) (added by the Employment Protection Act 1975 s 116, Sch 15 para 9). The Health and Safety at Work etc Act 1974 s 28(7) does not apply if (1) the person who has obtained any such information is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000; and (2) the information is not held by the authority on behalf of another person: s 28(9A) (added by SI 2004/3363). See also note 24.

17 Ie the power conferred by the Health and Safety at Work etc Act 1974 s 14(4)(a): see PARA 398.

18 Ie the powers conferred by the Health and Safety at Work etc Act 1974 s 20: see PARA 376.

19 As to the meaning of 'premises' see PARA 302 note 6.

20 Health and Safety at Work etc Act 1974 s 28(7)(a).

21 Ie under the Health and Safety at Work etc Act 1974 s 14(2) or (2A) (see PARA 397): s 28(7)(b) (amended by SI 2008/960).

22 See note 21.

23 Ie under the Health and Safety at Work etc Act 1974 s 20 (see PARA 376): s 28(7)(b).

24 Health and Safety at Work etc Act 1974 s 28(7)(c). Notwithstanding the provisions of s 28(7), in circumstances in which it is necessary to do so for the purposes of assisting in keeping persons or the representatives of persons employed at any premises adequately informed about matters affecting their health, safety and welfare, an inspector must give to such persons or their representatives (1) factual information obtained by him as mentioned in s 28(7) which relates to those premises or anything which was or is in them or was or is being done in them (s 28(8)(a)); and (2) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions (s 28(8)(b)). Where an inspector does give such information he must give the like information to the employer of those persons: s 28(8).

25 Health and Safety at Work etc Act 1974 s 28(7).

26 The provisions relating to entry have been repealed and replaced by those made under the Health and Safety at Work etc Act 1974: see PARA 375 et seq. As to inspectors' powers see PARA 376.

27 Offices, Shops and Railway Premises Act 1963 s 59 (amended by SI 1974/1943). As to offences see PARA 873 et seq.

28 Offices, Shops and Railway Premises Act 1963 s 59A (added by SI 2004/3363).

## **UPDATE**

### **382 Restrictions on disclosure of information**

NOTE 10--Health and Safety at Work etc Act 1974 s 28(6) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 42.

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### **383. Inspectors in relation to mines etc.**

The appointment and the powers of inspectors in relation to the Mines and Quarries Acts 1954 and 1969<sup>1</sup> are the same as those in respect of the Health and Safety at Work etc Act 1974<sup>2</sup>. References in any enactment, instrument or other document to (1) an inspector appointed under the Mines and Quarries Act 1954; (2) the inspector for the district; and (3) the chief inspector of mines are to be construed (except where the context requires otherwise) as references respectively to (a) an inspector appointed under the Health and Safety at Work etc Act 1974 as respects a mine or quarry<sup>3</sup>; (b) the inspector so appointed for carrying into effect the provisions of the Mines and Quarries Acts 1954 and 1969 in the district in which the mine or quarry is situated; and (c) the inspector so appointed who is authorised to act for the purpose of the provision in question<sup>4</sup>.

A panel of persons each possessing not less than five years' practical experience of mining operations may be appointed by the association or body which represents, or jointly by the associations or bodies which together represent, the majority of employees<sup>5</sup>, for carrying out inspections of a mine<sup>6</sup>. The owner<sup>7</sup> must permit such inspections to be carried out at least once every month<sup>8</sup> by members of the panel, so that every part of the mine and its equipment can be inspected by two of those members together, one of whom at least is employed at the mine<sup>9</sup>.

When a notifiable accident or dangerous occurrence<sup>10</sup> has occurred, any two members of the panel, of whom one at least is employed at the mine, may together inspect the place of the accident or occurrence and, as far as necessary for ascertaining the cause, any other part of the mine and any machinery, apparatus or thing there, and may take samples of atmosphere, dust and water<sup>11</sup>.

During both types of inspections mentioned above, the members of the panel making the inspection are entitled to inspect any documents which are required to be kept<sup>12</sup> at the mine office, or at such other place as may be approved by an authorised inspector<sup>13</sup>, and to be accompanied by their advisers<sup>14</sup>.

All persons employed at the mine must afford members of the inspecting panel such facilities and assistance as to matters or things to which those employees' responsibilities extend as are requisite for carrying out the inspection and, except on the occasion of the inspection of an accident or dangerous occurrence, it is the duty of the manager of a mine to give, if it is requested, any information in his possession as to the nature and extent of any proposed workings to the members of the panel<sup>15</sup>.

Upon completion of such an inspection, the inspecting members of the panel must forthwith make and sign a full and accurate report of the matters ascertained as a result of the inspection in a book provided for the purpose by the owner<sup>16</sup>. One copy of the report must be sent to the district inspector; and another one posted (and kept posted for 24 hours) in a conspicuous position at the mine<sup>17</sup>.

An inspection made under the foregoing provisions counts as an inspection made under regulations under the Health and Safety at Work etc Act 1974 as to the appointment and functions of safety representatives<sup>18</sup>.

Similar inspections of quarries are discussed in a later part of this title<sup>19</sup>.



- 1 As to those Acts see PARA 343 note 2.
- 2 See PARA 375.
- 3 le under the Health and Safety at Work etc Act 1974 s 19.
- 4 Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 6. As to the meaning of 'inspector' for the purposes of the Mines and Quarries Act 1954 s 182(1) see PARA 375 note 2.
- 5 Mines and Quarries Act 1954 s 123(1) (s 123 amended by SI 1999/2024).
- 6 As to the meaning of 'mine' see PARA 343 note 1.
- 7 As to the meaning of 'owner' see PARA 395 note 5.
- 8 'Month' means calendar month: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(a).
- 9 Mines and Quarries Act 1954 s 123(2) (as amended: see note 5).
- 10 le one of which notice is required to be given under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163: see PARA 399 et seq.
- 11 Mines and Quarries Act 1954 s 123(3) (amended by SI 1985/2023; and by virtue of the Interpretation Act 1978 s 17(2); for further amendment see note 5).
- 12 le by the Mines and Quarries Act 1954 s 123(5)(a); Mines and Quarries (Tips) Act 1969 s 1(3)(a). These will include documents such as transport rules, support rules, and tipping rules.
- 13 Mines and Quarries Act 1954 s 123(5)(a) (as amended: see note 5); Mines and Quarries (Tips) Act 1969 s 1(3)(a).
- 14 Mines and Quarries Act 1954 s 123(5)(b) (as amended: see note 5); Mines and Quarries (Tips) Act 1969 s 1(3)(a). They cannot preclude the owner and his nominee, the manager and his nominee, and any under-manager from accompanying them: Mines and Quarries Act 1954 s 123(5)(b)(i), (ii) (as so amended).
- 15 Mines and Quarries Act 1954 s 123(6) (as amended: see note 5).
- 16 Mines and Quarries Act 1954 s 123(7) (as amended: see note 5).
- 17 Mines and Quarries Act 1954 s 123(8) (as amended: see note 5).
- 18 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 5(4) (amended by SI 1999/2024). See further PARA 450; and **EMPLOYMENT**.
- 19 See the Quarries Regulations 1999, SI 1999/2024, reg 40; and PARA 843.

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## **(6) THE EMPLOYMENT MEDICAL ADVISORY SERVICE**

### **384. The service.**

The Employment Medical Advisory Service was established by the Secretary of State<sup>1</sup> under the Employment Medical Advisory Service Act 1972<sup>2</sup> and must now be maintained under the Health and Safety at Work etc Act 1974<sup>3</sup>.

One purpose of the service is to ensure that the Secretary of State, the Health and Safety Executive<sup>4</sup> and others concerned<sup>5</sup> with the health of employed persons, or of persons seeking or training for employment<sup>6</sup>, are kept informed of, and adequately advised on, matters of which they ought respectively to take cognisance concerning the safeguarding and improvement of the health of those persons<sup>7</sup>. Other purposes of the service are to give those persons information and advice on health in relation to employment and training for employment<sup>8</sup> and to carry out other functions of the Secretary of State relating to employment<sup>9</sup>.

The authority responsible for maintaining the service<sup>10</sup> must appoint employment medical advisers<sup>11</sup>. For the purposes of the service and of assisting the advisers in the performance of their functions, the authority may investigate or assist in, arrange for or make payments in respect of the investigation of problems arising in connection with the purposes of the service or the functions of the advisers; and it may provide and maintain such laboratories and other services as appear to it to be required for those investigations<sup>12</sup>. The authority may also appoint such other officers and servants as it may determine<sup>13</sup>.

1 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and as to the Secretary of State see PARA 349 et seq.

2 The Employment Medical Advisory Service Act 1972 ss 1, 6, Sch 1, were repealed by the Health and Safety at Work etc Act 1974 ss 60(5), 83(2), Sch 10, with effect from 1 January 1975 (Health and Safety at Work etc Act 1974 (Commencement No 1) Order 1974, SI 1974/1439); but acts done or orders made under the 1972 Act continue to have effect after the repeal as if done or made under the corresponding provisions of the 1974 Act: Health and Safety at Work etc Act 1974 s 60(5).

3 Health and Safety at Work etc Act 1974 s 55(1). Provision is made for extending this part of the Act (ie Pt II, comprising ss 55-60) outside Great Britain by Order in Council: see s 84(3), (4). As to the extension of ss 55-59 outside Great Britain see the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127; and PARA 305.

4 As to the Health and Safety Executive see PARA 361 et seq.

5 Such other persons concerned include organisations representing employers, employees and occupational health practitioners respectively: Health and Safety at Work etc Act 1974 s 55(6)(b) (amended by the Employment Act 1989 s 29(3), Sch 6 para 11; and by SI 2008/960).

6 'Persons training for employment' include persons attending industrial rehabilitation courses provided by virtue of the Employment and Training Act 1973: Health and Safety at Work etc Act 1974 s 55(6)(a). As to employment training see **EMPLOYMENT** vol 40 (2009) PARA 562 et seq.

7 Health and Safety at Work etc Act 1974 s 55(1)(a) (amended by the Employment Act 1989 s 29(4), Sch 7 Pt I; and by SI 2008/960).

8 Health and Safety at Work etc Act 1974 s 55(1)(b).

9 Health and Safety at Work etc Act 1974 s 55(1)(c).

10 See PARA 385.

11 Health and Safety at Work etc Act 1974 s 56(1); and see PARA 386. Where the authority is the Secretary of State he must have the approval of the Treasury as to numbers (s 56(1)(a); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670); where the authority is some other body, it must have such approval of the Secretary of State given with such consent (Health and Safety at Work etc Act 1974 s 56(1)(b)).

12 Health and Safety at Work etc Act 1974 s 55(3).

13 Health and Safety at Work etc Act 1974 s 56(1). See also note 11.

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### **385. The authority responsible for the service.**

The Secretary of State<sup>1</sup> is the authority responsible for maintaining the Employment Medical Advisory Service, but he may make arrangements for that responsibility to be discharged on his behalf by the Health and Safety Executive<sup>2</sup> or by some other body, and while such arrangements operate the body so discharging that responsibility and not the Secretary of State is the authority responsible for maintaining the service<sup>3</sup>. Where the authority responsible is neither the Secretary of State nor the Executive it must keep proper accounts in relation to the service and make a report to the Secretary of State for him to lay before Parliament<sup>4</sup>. The authority has wide powers of enforcement<sup>5</sup>.

1 As to the Secretary of State see PARA 384.

2 As to the Health and Safety Executive see PARA 361 et seq. It is the duty of the Executive to enter into such arrangements if the Secretary of State so directs: Health and Safety at Work etc Act 1974 s 55(5) (substituted by SI 2008/960).

3 Health and Safety at Work etc Act 1974 s 55(2) (amended by SI 2008/960). The Secretary of State may terminate such arrangements at any time and make other arrangements thereafter: Health and Safety at Work etc Act 1974 s 55(4).

4 See the Health and Safety at Work etc Act 1974 s 59(1), (3)-(6) (s 59(5) amended by SI 2008/960). The Comptroller and Auditor General must examine, certify and report on such accounts to Parliament: Health and Safety at Work etc Act 1974 s 59(2). For the corresponding obligations of the Executive see PARA 365. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 See eg the Health and Safety at Work etc Act 1974 ss 18(5), (7), 19, 53(1), Sch 1; and PARAS 352, 372, 375.

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### **386. Employment medical advisers.**

Only a fully registered medical practitioner<sup>1</sup> is qualified to be an employment medical adviser<sup>2</sup>. The authority for the time being responsible for the Employment Medical Advisory Service<sup>3</sup> may determine the cases and circumstances in which the advisers or any of them are to perform the duties or exercise the powers conferred on them by the Health and Safety at Work etc Act 1974 or otherwise<sup>4</sup>. The authority may also appoint a person to be the chief employment medical adviser or a deputy chief employment medical adviser<sup>5</sup>.

It is the duty of the Secretary of State or other authority to secure that each primary care trust and local health board arranges for a fully registered medical practitioner<sup>6</sup> to furnish, on the application of an employment medical adviser, such particulars of the school medical record of a person who has not attained the age of 18 and such other information relating to his medical history as the adviser may reasonably require for the efficient performance of his functions; but no particulars or information about any person which may be furnished to an adviser in pursuance of this requirement may, without the consent of that person, be disclosed by the adviser otherwise than for the efficient performance of his functions<sup>7</sup>.

The authority may pay advisers such salaries, fees and travelling or other allowances as it may determine<sup>8</sup>.

1    le a person registered under the Medical Act 1983: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

2    Health and Safety at Work etc Act 1974 s 56(2). He must hold a licence to practise: see s 56(3) (amended for this purpose by SI 2002/3135). As to the appointment of advisers see PARA 384 text and note 11. An appointment is not affected by a change in the authority responsible: see the Health and Safety at Work etc Act 1974 s 56(4). As to the authority responsible see PARA 385.

3    See PARA 385.

4    Health and Safety at Work etc Act 1974 s 56(3). Advisers may have wide powers of enforcement: see ss 19-26; and PARA 375 et seq. As to published guidance on the exercise of these powers see PARA 371.

5    See the Health and Safety at Work etc Act 1974 s 60(4).

6    le who holds a licence to practise.

7    Health and Safety at Work etc Act 1974 s 60(1) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 99; the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 2 para 41; and by SI 2002/3135 and SI 2007/961). Other employees are themselves required to disclose details of their medical history to employment medical advisers in certain circumstances: see eg the Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(5); and PARA 636.

8    Health and Safety at Work etc Act 1974 s 58(1)(a). The authority must have the approval referred to in PARA 384 note 11: s 58(2).

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### **387. Financial provisions.**

The Secretary of State<sup>1</sup> provides by regulations<sup>2</sup> for the fees to be payable for or in connection with the performance by the authority responsible for maintaining the Employment Medical Advisory Service of any function conferred<sup>3</sup> for the purpose of that service on that authority<sup>4</sup>.

The authority pays such amounts as it may determine<sup>5</sup> as travelling or other allowances or compensation to persons other than employment medical advisers called upon to give advice in connection with the execution of the authority's functions<sup>6</sup>, and to persons attending for medical examinations conducted by, or in accordance with arrangements made by, employment medical advisers<sup>7</sup>.

Where an authority other than the Secretary of State is responsible for maintaining the service, the Secretary of State must pay to it such sums as are approved by the Treasury and as he considers appropriate for the purpose of enabling the authority to discharge that responsibility<sup>8</sup>.

1 As to the Secretary of State see PARA 349 et seq.

2 Health and Safety at Work etc Act 1974 s 57(3). Where an authority other than the Secretary of State is responsible for maintaining the service, the Secretary of State must consult that authority before making any regulations under s 57: s 57(4).

3 The functions conferred by the Health and Safety at Work etc Act 1974 ss 55-60 or otherwise (s 57(1)), which include the performance by an employment medical adviser of his functions (s 57(2)).

4 Health and Safety at Work etc Act 1974 s 57(1).

5 The authority must have the approval referred to in PARA 384 note 11: Health and Safety at Work etc Act 1974 s 58(1), (2).

6 Health and Safety at Work etc Act 1974 s 58(1)(b).

7 Health and Safety at Work etc Act 1974 s 58(1)(c). Medical examinations include pathological, physiological and radiological tests and similar investigations conducted by advisers: s 58(1)(c).

8 Health and Safety at Work etc Act 1974 s 58(3); and see PARA 384.

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## **(7) NOTICES, REGISTERS AND OTHER DOCUMENTS**

### **(i) Notices etc under the Health and Safety at Work etc Act 1974**

#### **388. Service; in general.**

Any notice<sup>1</sup> required or authorised by any of the relevant statutory provisions<sup>2</sup> to be served on or given to an inspector<sup>3</sup> may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office<sup>4</sup>.

Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address<sup>5</sup>, or by sending it by post to him at that address<sup>6</sup>.

1 This provision applies to the sending or giving of a document as it applies to the giving of a notice: Health and Safety at Work etc Act 1974 s 46(8). The provisions of s 46 apply in relation to the service of notices required or authorised to be given by the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335 (see PARA 398): reg 11.

2 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

3 As to the meaning of 'inspector' see PARA 375 note 2.

4 Health and Safety at Work etc Act 1974 s 46(1).

5 I.e. his last known address, except that (1) in the case of a body corporate or its secretary or clerk, it must be left at the address of the registered or principal office of that body (Health and Safety at Work etc Act 1974 s 46(4)(a)); and (2) in the case of a partnership or a person having the control or the management of the partnership business, the proper address is that of the principal office of the partnership (s 46(4)(b)). For these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 46(4). If the person to be served with or given notice has specified an address within the United Kingdom other than his proper address within the meaning of s 46(4) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address is also to be treated as his proper address: s 46(5).

6 Health and Safety at Work etc Act 1974 s 46(2). Any such notice may (1) in the case of a body corporate, be served on or given to the secretary or clerk of that body (s 46(3)(a)); and (2) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business (s 46(3)(b)). As to the service of documents on a company see **COMPANIES** vol 14 (2009) PARA 671 et seq.

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### **389. Service on owners or occupiers.**

Any notice<sup>1</sup> required or authorised by any of the relevant statutory provisions<sup>2</sup> to be served on or given to the owner or occupier of any premises<sup>3</sup>, whether a body corporate or not, may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises<sup>4</sup>.

If the name or address of any such owner or occupier cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of 'owner' or 'occupier' of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises<sup>5</sup>.

1 This provision applies to the sending or giving of a document as it applies to the giving of a notice: Health and Safety at Work etc Act 1974 s 46(8). The provisions of s 46 apply in relation to the service of notices required or authorised to be given by the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335 (see PARA 398): reg 11.

2 As to the meaning of 'the relevant statutory provisions' see PARA 302 note 24.

3 As to the meaning of 'premises' see PARA 302 note 6.

4 Health and Safety at Work etc Act 1974 s 46(6), which is expressed to be without prejudice to any other provisions of s 46.

5 Health and Safety at Work etc Act 1974 s 46(7).



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## **(ii) Notices etc under the Factories Act 1961**

### **390. Preservation of registers and records.**

Any register or record kept in pursuance of the Factories Act 1961 must be preserved and kept available for inspection by any inspector or by an employment medical adviser<sup>1</sup> for at least two years, or such other period as may be prescribed for any class or description of register or record, after the date of the last entry in the register or record<sup>2</sup>.

<sup>1</sup> As to employment medical advisers see PARA 386.

<sup>2</sup> Factories Act 1961 s 141 (amended by the Employment Medical Advisory Service Act 1972 s 2(1), Sch 2; and by SI 2009/605). The references to a register in the Factories Act 1961 s 141 do not include a reference to a general register previously required by that section to be kept and preserved unless it contains a record that was entered in or attached to the register in pursuance of s 39(2) (record of gasholder examinations: see PARA 513) within the period of two years ending with 6 April 2009: Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009, SI 2009/605, regs 1, 3(4). In the case of a general register containing such a record, the Factories Act 1961 s 141 is to be read as requiring the record to be preserved and kept available for inspection for at least two years after the date of the last record entered in or attached to the register: Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009, SI 2009/605, reg 3(5).

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### **391. Birth certificates.**

Where the age of any person is required to be ascertained or proved for the purposes of the Factories Act 1961 any person is entitled, on presenting a written requisition in the prescribed form<sup>1</sup>, and on payment of the prescribed fee<sup>2</sup>, to obtain a certified extract, under the hand of a registrar or superintendent registrar, of the entry in the register under the Births and Deaths Registration Act 1953 of the birth of that person<sup>3</sup>. The form of requisition must be supplied on request without charge by every superintendent registrar and registrar of births and deaths<sup>4</sup>.

1 For the form see the Certificates of Births, Deaths and Marriages (Requisition) Regulations 1937, SR & O 1937/885, reg 3, Schedule Form A.

2 As to the prescribed fee see the Factories Act 1961 s 178(1) (as amended: see note 3).

3 Factories Act 1961 s 178(1) (amended by SI 1997/2939; and by virtue of SI 2002/3076).

4 Factories Act 1961 s 178(2).

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### **(iii) Notices etc under Other Legislation**

#### **392. Registers and records under miscellaneous enactments.**

A register must be kept of persons under the age of 16 employed in any industrial undertaking<sup>1</sup> with the dates of their birth, and this register must be open to inspection at all times<sup>2</sup>. Failure to keep the register, or refusal or neglect to produce it for inspection by an officer of a local authority, renders the employer liable on summary conviction to a fine not exceeding level 2 on the standard scale<sup>3</sup>.

Employers must keep records of risk assessments and of employees' exposure to various risks. These requirements are dealt with in the appropriate contexts in the part of this title dealing with general risks<sup>4</sup>.

<sup>1</sup> 'Industrial undertaking' is defined by the Employment of Women, Young Persons, and Children Act 1920 s 4, Schedule Pt I art 1 (s 4 amended by the Statute Law (Repeals) Act 1978 and the Employment Act 1989 s 29(3), Sch 6 para 2), as (1) mines, quarries; (2) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation and transmission of electricity and motive power of any kind; (3) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction, as well as laying the foundations of any such structure; and (4) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand. The competent authority in each country must define the line of division which separates industry from commerce and agriculture.

<sup>2</sup> Employment of Women, Young Persons, and Children Act 1920 s 1(4) (substituted by the Employment Act 1989 s 10(2), Sch 3 Pt III para 1). The occupier of a factory must send to an inspector such extracts from the register as he may from time to time require for the purpose of the execution of his duties: Factories Act 1961 s 140(3) (repealed; but the repeal of s 140 does not affect s 140(3) in its application to a register required to be kept under the Employment of Women, Young Persons and Children Act 1920: Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009, SI 2009/605, reg 3(3)).

<sup>3</sup> Employment of Women, Young Persons, and Children Act 1920 s 1(6)(c) (amended by the Employment Act 1989 Sch 6 para 1 and by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 853 note 29.

<sup>4</sup> See eg the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9; and PARA 643.

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### **393. Records and information relating to mines and quarries.**

Every report or record which is required to be made under the relevant statutory provisions<sup>1</sup> which apply to a mine<sup>2</sup> must be in a suitable form and must be kept at the mine or at some other place approved by the Health and Safety Executive<sup>3</sup> for at least three years from the date on which the report or record was made unless the provision concerned expressly imposes some other requirement<sup>4</sup>. Copies of all rules and schemes required to be made under the relevant statutory provisions which apply to a mine must be kept at the office of the mine while the rules and schemes remain operative<sup>5</sup>. A copy of the written statement of duties of all persons appointed at a mine<sup>6</sup> must be kept at the mine or at some other place approved by the Health and Safety Executive for at least 12 months after the date on which the appointment ceased to have effect<sup>7</sup>.

It is an offence intentionally to make a false entry in any such report, record, book or register or, with intent to deceive, to make use of any entry known to be false<sup>8</sup>.

Reports and records under the regulations applying to quarries are dealt with in a later part of this title<sup>9</sup>.

1 As to the relevant statutory provisions see PARA 302 note 24. See further PARA 748 et seq.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 As to the Health and Safety Executive see PARA 361 et seq.

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 35(1). This provision applies also to copies of information notified to the Health and Safety Executive under the relevant statutory provisions applying to the mine: reg 35(2).

5 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 35(4).

6 I.e. under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897: see PARA 748.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 35(3).

8 Health and Safety at Work etc Act 1974 s 33(1)(l). As to offences and penalties see generally PARA 852 et seq.

9 See the Quarries Regulations 1999, SI 1999/2024, reg 44; and PARA 839.

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#### **(iv) Provision of Safety Information for Employees**

##### **394. Information for employees; in general.**

An employer must, in relation to each of his employees<sup>1</sup>:

- 138 (1) ensure that a poster in the form approved and published for these purposes by the Health and Safety Executive<sup>2</sup> is kept displayed in a readable condition at a place which is reasonably accessible to the employee while he is at work, and in such a position in that place as to be easily seen and read by that employee<sup>3</sup>; or
- 139 (2) give to the employee a leaflet<sup>4</sup> similarly approved and published<sup>5</sup>.

The Executive may, by a certificate in writing, exempt any person or class of persons from all or any of the requirements imposed by these provisions and any such exemption may be granted subject to conditions and to a limit of time and may be revoked in writing at any time<sup>6</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health, safety and welfare of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>7</sup>.

Except in such cases as may be prescribed<sup>8</sup>, it is the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees<sup>9</sup>.

1 The Health and Safety Information for Employees Regulations 1989, SI 1989/682, have effect for the purpose of providing information to employees relating to health, safety and welfare but they do not apply in relation to the master and crew of a sea-going ship (except to the extent that the master and crew are engaging in activities falling within the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4, art 5 or art 6 (see PARA 305)): Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 2(1), (4) (reg 2(1), (4), (5) amended by SI 1995/2923); Interpretation Act 1978 s 17(2). Subject to that, the 1989 regulations apply to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80, 82 apply by virtue of that 2001 Order as they apply to premises and activities within Great Britain: Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 2(5) (as so amended); Interpretation Act 1978 s 17(2). As to the meaning of 'employee' see PARA 302 note 4.

2 Ie the 'approved poster', as revised from time to time in accordance with the Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 3(2): regs 2(1), 3(1). As to the Health and Safety Executive see PARA 361 et seq.

The Health and Safety Executive may approve a revision (in whole or in part) to the form of poster or leaflet (as to the leaflet see the text and notes 4-5); and where it does so it must publish the revised form of poster or leaflet and issue a notice in writing specifying the date the revision was approved: reg 3(2). Such a revision is not to take effect until five years after the date of its approval, but during that time the employer may use the approved poster or the approved leaflet incorporating that revision for the purposes of reg 4(1) (see heads (1)-(2) in the text): reg 3(3) (amended by SI 2009/606). The Health and Safety Executive may approve a particular form of poster or leaflet for use in relation to a particular employment or class of employment and where any such form has been approved the Executive must publish it and issue a notice in writing specifying the date

that form was approved and the particular employment or class of employment in respect of which it is approved: Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 3(4) (reg 3(4)-(6) added by SI 1995/2923). Where a particular form of poster or leaflet has been so approved then the Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 3(2), (3) applies to the revision of that particular form as it applies to the revision of an approved poster or an approved leaflet save that the notice in writing issued under reg 3(2) in respect of the revised form must also specify the employment or class of employment in respect of which the revised form is approved: reg 3(5) (as so added). An employer may, in respect of employment for which a particular poster or leaflet has been approved under reg 3(4), comply with the requirements of reg 4(1) by displaying that particular form of poster or giving that particular form of leaflet and in connection with any such compliance reg 4 is to be construed as if the references to the approved poster and the approved leaflet in that regulation were references to the particular form of poster and the particular form of leaflet approved under reg 3(4) and as if the reference in reg 4(3) to revision pursuant to reg 3(2) were a reference to a revision pursuant to reg 3(5): reg 3(6) (as so added).

Where the form of poster or leaflet is revised pursuant to reg 3(2), then on or before the date the revision takes effect (1) an employer relying on compliance with reg 4(1)(a) (see head (1) in the text) must ensure that the approved poster displayed is the one as revised; (2) an employer relying on compliance with reg 4(1)(b) (see head (2) in the text) must either give to the employees concerned fresh approved leaflets (as so revised) or bring the revision to their notice in writing: reg 4(3).

3 Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 4(1)(a); and see note 2. An employer relying on compliance with reg 4(1)(a) must, subject to reg 4(2), ensure that the following information is clearly and indelibly written on the poster in the appropriate space: (1) the name of the enforcing authority for the premises where the poster is displayed and the address of the office of that authority for the area in which those premises are situated; and (2) the address of the office of the employment medical advisory service for the area in which those premises are situated; or (3) information as to how any of his employees may obtain the information referred to in heads (1) and (2) above: reg 5(1) (amended by SI 2009/606). Where there is a change in any of the matters referred to in the Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 5(1) it is to be sufficient compliance with that requirement to the corresponding amendment to the poster to be made within six months from the date thereof: reg 5(2). As to the employment medical advisory service see PARA 384 et seq. As to the meaning of 'enforcing authority' see PARA 352 note 2.

4 Ie an 'approved leaflet': Health and Safety Information for Employees Regulations 1989, SI 1989/682, regs 2(1), 3(1).

5 Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 4(1)(b). An employer is to be treated as having complied with reg 4(1)(b) from the date the 1989 regulations came into force (ie 18 October 1989: reg 1) or the date the employee commences employment with him (if later) if he gives to the employee the approved leaflet as soon as is reasonably practicable after that date: reg 4(2).

An employer who gives to his employee a leaflet pursuant to reg 4(1)(b) must give with the leaflet a written notice containing (1) the name of the enforcing authority for the premises where the employee works, and the address of the office of that authority for the area in which those premises are situated; and (2) the address of the office of the employment medical advisory service for the area in which those premises are situated; or (3) information as to how any of his employees may obtain the information referred to in heads (1) and (2) above: reg 5(3) (amended by SI 2009/606). Where the employee works in more than one location he is to be treated for the purposes of the Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 5(3) as working at the premises from which his work is administered, and if his work is administered from two or more premises, the employer may choose any one of them for the purpose of complying with that requirement: reg 5(4). Where an employer relies on compliance with reg 4(1)(b) and there is a change in any of the matters referred to in reg 5(3) the employer must within six months of the date thereof give to the employee a written notice specifying the change: reg 5(5).

6 Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 6(1).

7 Health and Safety Information for Employees Regulations 1989, SI 1989/682, reg 6(2). In any proceedings for an offence for a contravention of the 1989 regulations it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence: reg 7. As to offences and penalties generally see PARA 852 et seq.

8 Ie prescribed by regulations made by the Secretary of State: Health and Safety at Work etc Act 1974 s 53(1). In the exercise of this power the Secretary of State made the Employers' Health and Safety Policy (Exception) Regulations 1975, SI 1975/1584, which came into force on 1 November 1975: reg 1(1). Any employer who carries on an undertaking in which for the time being he employs less than five employees is excepted by those regulations as respects that undertaking from the provisions of the Health and Safety at Work etc Act 1974 s 2(3) (which requires employers to bring to the notice of their employees a written statement of their general policy with respect to the health and safety at work of their employees and the organisation and arrangements for the time being in force for carrying out that policy: see the text and note 8):

Employers' Health and Safety Policy (Exception) Regulations 1975, SI 1975/1584, reg 2. See *Osborne v Bill Taylor of Huyton Ltd* [1982] ICR 168, [1982] IRLR 17 (31 betting shops in a chain, each with its own manager and run as a separate business, held to be separate undertakings for these purposes).

9 Health and Safety at Work etc Act 1974 s 2(3). In performing this duty, every employer of persons at work at a mine (other than the owner) must take full account of the owner's safety policy prepared in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(4) (as to which see PARA 749); reg 4(4). As to the meanings of 'mine' and 'owner' see respectively PARAS 343 note 1, 749 note 2. As to contravention of this duty see PARA 420; and as to offences and penalties generally see PARA 852 et seq.

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### **395. Information for employees in mines.**

The Health and Safety Executive<sup>1</sup> may itself prepare and designate a book containing such information about the Mines and Quarries Acts 1954 and 1969<sup>2</sup> and orders and regulations as affects any class of persons employed at mines<sup>3</sup>, and other information which the Health and Safety Executive considers ought to be brought to their notice, for the purpose of its being issued to them<sup>4</sup>. Alternatively, the Health and Safety Executive may approve, for the same purpose, any such book prepared by or on behalf of an owner<sup>5</sup> of mines<sup>6</sup>. Where a book prepared by the Health and Safety Executive has been designated, or an owner's book approved, for issue, it is the duty of the responsible person<sup>7</sup> to give a copy of it to every person who thereafter begins employment as a member of that class of persons<sup>8</sup>, and as soon as practicable to give a copy to every person who is employed at the time of designation or approval as a person of that class<sup>9</sup>.

1 As to the Health and Safety Executive see PARA 361 et seq.

2 As to those Acts see PARA 343 note 2.

3 As to the meaning of 'mine' see PARA 343 note 1.

4 Mines and Quarries Act 1954 s 137 (amended by virtue of SI 1974/2013; and by SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a); Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1). As to the general duties of the Health and Safety Executive relating to the provision of information see PARA 367; and as to publications by the Executive see PARA 371.

5 'Owner' means the person for the time being entitled to work a mine: Mines and Quarries Act 1954 s 181(1) (s 181(1), (4) amended by SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a). A liquidator, manager or receiver who carries on the business of an owner is an additional owner: Mines and Quarries Act 1954 s 181(4).

6 Mines and Quarries Act 1954 s 137 (as amended: see note 4); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

7 'Responsible person', in relation to a mine, means its manager: Mines and Quarries Act 1954 s 182(1) (amended by SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

8 Mines and Quarries Act 1954 s 137(a) (as amended: see note 4); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

9 Mines and Quarries Act 1954 s 137(b) (as amended: see note 4); Mines and Quarries (Tips) Act 1969 s 1(3)(a).



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## **(v) Accident Books**

### **396. Requirement to keep accident book.**

Under social security legislation, regulations may provide for:

- 140 (1) requiring the prescribed notice of an accident in respect of which industrial injuries benefit<sup>1</sup> may be payable to be given within the prescribed time by the employed earner to the earner's employer or other prescribed person;
- 141 (2) requiring employers:  
7
  - 11. (a) to make reports, to such person and in such form and within such time as may be prescribed, of accidents in respect of which industrial injuries benefit may be payable;
  - 12. (b) to furnish to the prescribed person any information required for the determination of claims, or of questions arising in connection with claims or awards;
  - 13. (c) to take such other steps as may be prescribed to facilitate the giving notice of accidents, the making of claims and the determination of claims and of questions so arising<sup>2</sup>.

8

Every owner or occupier (being an employer) of any mine or quarry or of any premises to which any of the provisions of the Factories Act 1961 applies<sup>3</sup> and every employer by whom ten or more persons are normally employed at the same time on or about the same premises in connection with a trade or business carried on by the employer must, subject to the following provisions:

- 142 (i) keep readily accessible a means, whether in a book or books or by electronic means, in a form approved by the Secretary of State<sup>4</sup>, by which a person employed by the employer or some other person acting on his behalf may record the appropriate particulars<sup>5</sup> of any accident causing personal injury to that person<sup>6</sup>; and
- 143 (ii) preserve every such record for the period of at least three years from the date of its entry<sup>7</sup>.

Any entry of the appropriate particulars of an accident made in a book kept for that purpose in accordance with the above provisions, if made as soon as practicable after the happening of an accident by the employed earner or by some other person acting on his behalf, is sufficient notice of the accident for the purposes of the statutory obligation to give notice of it<sup>8</sup> to the employer<sup>9</sup>. An employer is under a duty to take reasonable steps to investigate the circumstances of every accident of which such notice is given to him<sup>10</sup> and to furnish information and particulars to the relevant government department<sup>11</sup>.

There are special provisions relating to accidents to mariners<sup>12</sup>.

These provisions are distinct from the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995<sup>13</sup>, which are considered below<sup>14</sup>.

- 1 As to industrial injuries benefit see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 126 et seq.
- 2 Social Security Administration Act 1992 s 8.
- 3 As to premises to which the Factories Act 1961 applies see PARA 307 et seq.
- 4 As to the Secretary of State see PARA 349 et seq.
- 5 Ie the appropriate particulars as defined in the Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 24: reg 25(3)(a) (reg 25(3)(a), (b) substituted by SI 1993/2113). Those particulars are: (1) full name, address and occupation of injured person; (2) date and time of accident; (3) place where accident happened; (4) cause and nature of injury; (5) name, address and occupation of person giving the notice, if other than the injured person: Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 24(5), Sch 4.
- 6 Such a record is commonly kept in the form of an 'accident book': see the Approved Accident Book (Form BI 510) which was republished in 2003 with the intention of making it compliant with the Data Protection Act 1998 in terms of protecting the confidentiality of personal information contained in such records. The old version may not be used after 31 December 2003. For examples of cases in which an entry in an accident book has been considered in the context of liability for negligence see *Harvey v RG O'Dell Ltd (Galway Third Party)* [1985] 2 QB 78, [1958] 1 All ER 657; *Breeze v John Stacey & Sons Ltd* [2000] All ER (D) 2419; *Young v Consignia* [2001] All ER (D) 480 (Jul) (where no entry had been made); *Dean v Leicestershire Chief Constable* [2002] EWHC 2781 (QB), [2002] All ER (D) 276 (Dec); *Russell v Wincanton Ltd* [2003] EWCA Civ 504, [2003] All ER (D) 201 (Mar); *Binks v Securicor Omega Express Ltd* [2003] EWCA Civ 993, [2003] 1 WLR 2557, [2003] All ER (D) 266 (Jul). As to negligence see PARA 412 et seq.
- 7 Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 25(3) (as amended: see note 5). The 1979 regulations have effect as if made under the Social Security Administration Act 1992 s 8 by virtue of the Social Security (Consequential Provisions) Act 1992 s 2(2).
- 8 Ie the obligation under the Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 24(1), (2): see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 345.
- 9 Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 24(3).
- 10 See the Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 25(1); and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 345.
- 11 See the Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 25(2); and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 345.
- 12 See the Social Security (Industrial Injuries) (Mariners' Benefits) Regulations 1975, SI 1975/470, reg 6.
- 13 Ie the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, which are known colloquially as 'RIDDOR'.
- 14 See PARA 399 et seq.

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## **(8) REPORTS, INQUIRIES AND ACCIDENTS ETC**

### **(i) Reports and Inquiries under the Health and Safety at Work etc Act 1974**

#### **397. Reports and inquiries.**

The Health and Safety Executive<sup>1</sup> may at any time (1) investigate and make a special report on any accident, occurrence, situation or other matter whatsoever which it thinks it necessary or expedient to investigate for any of the general purposes of Part I of the Health and Safety at Work etc Act 1974<sup>2</sup> or with a view to the making of regulations for those purposes<sup>3</sup>; or (2) authorise another person to investigate and make a special report into any such matter<sup>4</sup>; or (3) with the consent of the Secretary of State<sup>5</sup>, direct an inquiry to be held into any such matter<sup>6</sup>.

In the case of such a special report, or a report made by the person holding such an inquiry, the Executive may cause the report, or so much of it as it thinks fit, to be made public at such time and in such manner as it thinks fit<sup>7</sup>.

<sup>1</sup> As to the Health and Safety Executive see PARA 361 et seq.

<sup>2</sup> As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) see PARA 303. See also note 3.

<sup>3</sup> Health and Safety at Work etc Act 1974 s 14(1), (2)(a) (s 14(1) amended and s 14(2) substituted by SI 2008/690). The general purposes of the Health and Safety at Work etc Act 1974 Pt I are to be treated as not including the railway safety purposes, but it is otherwise immaterial whether the Health and Safety Executive is or is not responsible for securing the enforcement of such, if any, of the relevant statutory provisions (as to which see PARA 302 note 24) as relate to the matter in question: s 14(1) (amended by the Railways Act 2005 s 2, Sch 3 para 4(5)). As to the Executive's enforcement responsibilities see PARA 370. As to the meaning of 'railway safety purposes' see PARA 350 note 9.

<sup>4</sup> Health and Safety at Work etc Act 1974 s 14(2)(b) (as substituted: see note 3).

<sup>5</sup> As to the Secretary of State see PARA 349.

<sup>6</sup> Health and Safety at Work etc Act 1974 s 14(2A) (added by SI 2008/690). As to the procedure at inquiries see PARA 398.

<sup>7</sup> Health and Safety at Work etc Act 1974 s 14(5) (substituted by SI 2008/690). The Executive may (1) pay to the person making such an investigation and special report (if not an officer or servant of the Executive) such remuneration and expenses as the Secretary of State may, with the approval of the Treasury, determine (Health and Safety at Work etc Act 1974 s 14(6)(a) (s 14(6) amended by SI 2008/690); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670); (2) pay to the person holding an inquiry, and to any assessor appointed to assist him, such remuneration and expenses, and to witnesses such expenses, as the Secretary of State may with the same approval determine (Health and Safety at Work etc Act 1974 s 14(6)(b) (as so amended)); and (3) to such extent as the Secretary of State may determine, defray the other costs, if any, of any such investigation and special report or inquiry (s 14(6)(c)).

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### 398. Inquiry procedure.

An inquiry<sup>1</sup> must be held in accordance with regulations<sup>2</sup> made by the Secretary of State, and must be held in public except where, or to the extent that, the regulations provide otherwise<sup>3</sup>. The person appointed to hold the inquiry must after its close make a report in writing to the Health and Safety Executive, which must include his findings of fact and his recommendations, if any, or his reason for not making any recommendation<sup>4</sup>.

1    le an inquiry under the Health and Safety at Work etc Act 1974 s 14(2A): see PARA 397 text to notes 5-6.

2    See the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335 (amended by SI 1976/1246 and SI 2008/960). Such regulations may include provision (1) conferring on the person holding any such inquiry, and any person assisting him in the inquiry, powers of entry and inspection (Health and Safety at Work etc Act 1974 s 14(4)(a)); (2) conferring on any such person powers of summoning witnesses to give evidence or produce documents and power to take evidence on oath and administer oaths or require the making of declarations (s 14(4)(b)); (3) requiring any such inquiry to be held otherwise than in public where or to the extent that a minister of the Crown so directs (s 14(4)(c); and see note 3).

3    Health and Safety at Work etc Act 1974 s 14(3) (amended by SI 2008/690). As to the Secretary of State see PARA 349. As to public inquiries generally see **ADMINISTRATIVE LAW**. There is power to hold an inquiry otherwise than in public when a minister of the Crown has so directed in writing in the interests of national security, or when the disclosure of information relating to a trade secret is likely: see the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 8(3). Those entitled to appear at the inquiry are the Health and Safety Executive (reg 5(1)(a) (amended by SI 2008/960)), the enforcing authority concerned (see PARA 352 note 2) (Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 5(1)(b)), the relevant employers' association or trade union (reg 5(1)(d)), the person suffering damage as a result of the subject of the inquiry or his personal representatives (reg 5(1)(e)), the owner or occupier of the premises where the subject of the inquiry occurred (reg 5(1)(f)), the person carrying on activities giving rise to the subject of the inquiry (reg 5(1)(g)), and any other person at the discretion of the person appointed to hold the inquiry (regs 2(1), 5(2) (reg 2(1) amended by SI 1976/1246 and SI 2008/960)). A body corporate, the Executive, an employers' association, or a trade union may be represented by persons officially appointed by them, or by counsel or a solicitor: Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 6(1), (2) (reg 6(1) amended by SI 2008/960). Any other person may appear on his own behalf, or by counsel, or solicitor, or any other person: Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 6(3). Several persons with similar interests may be represented collectively if the person appointed to hold the inquiry so allows: reg 6(4). Regulations also provide for notification of the inquiry (reg 4 (amended by SI 2008/960)), for the compulsory attendance of witnesses and production of documents (Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 7), for the procedure to be followed at the inquiry (reg 8 (amended by SI 2008/960)), for site inspections (Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 9), for the making of the report (reg 10 (amended by SI 2008/960): see note 4), and for the service of notices (Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 11). It is an offence for a person to contravene any requirement imposed by or under these regulations or intentionally to obstruct any person in the exercise of his powers under the Health and Safety at Work etc Act 1974 s 14 (s 33(1)(d)). As to the penalty see PARA 853.

Documents prepared for the purposes of an inquiry may be subject to litigation privilege: see *Three Rivers District Council v Bank of England (No 6)* [2004] UKHL 48, [2005] 1 AC 610, sub nom *Three Rivers District Council v Bank of England (No 5)* [2005] 4 All ER 948 (decided in the context of a private non-statutory inquiry); and **CIVIL PROCEDURE** vol 11 (2009) PARA 558 et seq.

4    Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 10(1) (as amended: see note 3). Except where the report is to be published, in whole or in part, in pursuance of the Health and Safety at Work etc Act 1974 s 14(5) (see PARA 397 text to note 7), the Executive must send to any person who appeared at the inquiry a copy of the report or so much of it as it thinks fit: Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335, reg 10(2) (as so amended). For restrictions on the disclosure of information see PARA 382.



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## **(ii) Notification of Injury, Disease or Dangerous Occurrence**

### **399. Circumstances in which notification is required.**

Subject to certain exceptions<sup>1</sup>, where:

- 144 (1) any person dies as a result of an accident<sup>2</sup> arising out of or in connection with work<sup>3</sup>;
- 145 (2) any person at work suffers a major injury<sup>4</sup> as a result of an accident arising out of or in connection with work;
- 146 (3) any person not at work suffers an injury as a result of an accident arising out of or in connection with work and that person is taken from the site of the accident to a hospital for treatment in respect of that injury;
- 147 (4) any person not at work suffers a major injury as a result of an accident arising out of or in connection with work at a hospital; or
- 148 (5) there is a dangerous occurrence<sup>5</sup>,

the responsible person<sup>6</sup> must forthwith notify the relevant enforcing authority<sup>7</sup> of that fact by the quickest practicable means<sup>8</sup>. Within ten days that person must send a report of the matter to the relevant enforcing authority on a form approved<sup>9</sup> for these purposes, unless within that period he makes a report of it to the Health and Safety Executive by some other means so approved<sup>10</sup>. Paper reporting is still permissible but since 2001 it has been possible to report the information by telephone or electronically to the Incident Contact Centre<sup>11</sup>.

Subject to the same exceptions<sup>12</sup>, where a person at work is incapacitated for work of a kind which he might reasonably be expected to do, either under his contract of employment, or, if there is no such contract, in the normal course of his work, for more than three consecutive days (excluding the day of the accident but including any days which would not have been working days) because of an injury resulting from an accident arising out of or in connection with work, other than one reportable under heads (1) to (5) above, the responsible person must as soon as practicable and, in any event, within ten days of the accident send a report of it to the relevant enforcing authority on a form approved for these purposes, unless within that period he makes a report of it to the Executive by some other means so approved<sup>13</sup>.

Additional requirements apply in the case of mines and quarries<sup>14</sup> and offshore workplaces<sup>15</sup>.

Subject to the following provision and to any of the provisions imposed by the European Community in respect of the encouragement of improvements in the safety and health of workers at work, the Executive may, by a certificate in writing, exempt any person or class of persons from any requirement imposed by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995<sup>16</sup>, and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time<sup>17</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and, in particular, to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>18</sup>.

The 1995 regulations are extended to apply to and in relation to certain premises and activities outside Great Britain<sup>19</sup>.

It is a defence in proceedings against any person for an offence under those regulations for that person to prove that he was not aware of the event requiring him to notify or send a report to the relevant enforcing authority and that he had taken all reasonable steps to have all such events brought to his notice<sup>20</sup>.

1 The subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10. The requirements of reg 3 (see the text and notes 2-12) relating to the death or injury of a person as a result of an accident do not apply to an accident causing death or injury to a person arising out of the conduct of any operation on, or any examination or other medical treatment of, that person which is administered by, or conducted under the supervision of, a registered medical practitioner or a registered dentist (and for these purposes 'registered dentist' has the meaning assigned to it by the Dentists Act 1984 s 53(1)); Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10(1). The requirements of reg 3 and of reg 4 (see PARA 408) relating to the death or injury of a person as a result of an accident apply to an accident arising out of or in connection with the movement of a vehicle on a road only if that person (1) was killed or suffered an injury as a result of exposure to a substance being conveyed by the vehicle; or (2) was either himself engaged in, or was killed or suffered an injury as a result of the activities of another person who was at the time of the accident engaged in, work connected with the loading or unloading of any article or substance onto or off the vehicle; or (3) was either himself engaged in, or was killed or suffered an injury as a result of the activities of another person who was at the time of the accident engaged in, work on or alongside a road, being work concerned with the construction, demolition, alteration, repair or maintenance of (a) the road or the markings or equipment thereon; (b) the verges, fences, hedges or other boundaries of the road; (c) pipes or cables on, under, over or adjacent to the road; or (d) buildings or structures adjacent to or over the road; or (4) was killed or suffered an injury as a result of an accident involving a train: reg 10(2). 'Road' has the meaning assigned to it by the Road Traffic Act 1988 s 192(1) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206); 'train' includes a reference to a locomotive, tramcar or other power unit and to a vehicle used on a relevant transport system: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'relevant transport system' see note 2.

The requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, regs 3, 4 and of reg 5 (see PARA 405) relating to any death, injury or case of disease do not apply to a member of the armed forces of the Crown or of a visiting force who was on duty at the relevant time (and for these purposes 'visiting force' has the meaning assigned to it by the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10(3). Regulations 3, 4 and 5 do not apply otherwise than in respect of offshore workplaces to anything which is required to be notified under any of the enactments or instruments specified in Sch 7: reg 10(4). The enactments and instruments so specified are (i) the Nuclear Installations Act 1965 and orders and regulations made or to be made thereunder (see **FUEL AND ENERGY**); (ii) the Merchant Shipping Act 1995 and orders and regulations made or to be made thereunder (see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 846 et seq); (iii) the Ionising Radiations Regulations 1999, SI 1999/3232 (see PARA 648 et seq); (iv) the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693; (v) the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798 (see **AIR LAW** vol 2 (2008) PARA 602 et seq); and (vi) the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975 (see PARA 668): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 7 (amended by SI 2001/2975 and SI 2005/1082); Interpretation Act 1975 s 17(2). 'Offshore workplace' means any place where activities are carried on or any premises such that prescribed provisions of the Health and Safety at Work etc Act 1974 are applied to those activities or premises by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4, art 5 or art 6 (see PARA 305); and for this purpose arts 4-6 are to be deemed to apply to activities or premises within Great Britain which are in tidal waters or on the foreshore or other land intermittently covered by such waters as they apply to activities and premises within territorial waters or a designated area: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1); Interpretation Act 1978 s 17(2).

For further exceptions see note 8. As to the meaning of 'accident' see note 2.

2 'Accident' includes (1) an act of non-consensual physical violence done to a person at work; and (2) an act of suicide which occurs on, or in the course of the operation of, a relevant transport system; and 'relevant transport system' means a railway, a tramway, a trolley vehicle system or any other system using guided transport but does not include a guided bus system or a trolley vehicle system when it operates on a road: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1) (definition of 'relevant transport system' substituted by SI 2006/599). 'Railway' and 'tramway' have the meanings assigned to those terms by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1) (ie respectively a system of transport employing parallel rails which provide support and guidance for

vehicles carried on flanged wheels and form a track which either is of a gauge of at least 350 mm or crosses a carriageway (whether or not on the same level), but not including a tramway; and a system of transport used wholly or mainly for the carriage of passengers which employs parallel rails which provide support and guidance for vehicles carried on flanged wheels and are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment), and on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1) (definitions substituted by SI 2006/599). 'Trolley vehicle system' has the meaning assigned to it by the Transport and Works Act 1992 s 67 (ie a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles)): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). 'Guided bus system' has the meaning assigned to it by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1) (ie a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation (a) travel along roads; and (b) are guided (whether while on the road or at other times) by means of either apparatus, a structure or other device which is fixed and not part of the bus, or a guidance system which is automatic); and 'guided transport' has the meaning assigned to it by the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 2(1) (ie a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of (i) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or (ii) a guidance system which is automatic): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1) (definitions added and substituted respectively by SI 2006/599). See **RAILWAYS, INLAND WATERS AND CROSS-COUNTRY PIPELINES**.

For the purposes of the 1995 regulations, a person who is at an offshore workplace is deemed to be at work at all times when he is at that workplace in connection with his work: reg 2(3). As to the meanings of 'work' and 'at work' see PARA 302 note 1.

3 For other requirements for reporting deaths see PARA 408.

4 'Major injury' means an injury or condition specified in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 1: reg 2(1). The following are major injuries: (1) any fracture, other than to the fingers, thumbs or toes; (2) any amputation; (3) dislocation of the shoulder, hip, knee or spine; (4) loss of sight (whether temporary or permanent); (5) a chemical or hot metal burn to the eye or any penetrating injury to the eye; (6) any injury resulting from an electric shock or electrical burn (including any electrical burn caused by arcing or arcing products) leading to unconsciousness or requiring resuscitation or admittance to hospital for more than 24 hours; (7) any other injury (a) leading to hypothermia, heat-induced illness or to unconsciousness; (b) requiring resuscitation; or (c) requiring admittance to hospital for more than 24 hours; (8) loss of consciousness caused by asphyxia or by exposure to a harmful substance or biological agent; (9) either of the following conditions which result from the absorption of any substance by inhalation, ingestion or through the skin: (a) acute illness requiring medical treatment; or (b) loss of consciousness; (10) acute illness which requires medical treatment where there is reason to believe that this resulted from exposure to a biological agent or its toxins or infected material: Sch 1. 'Biological agent' has the meaning assigned to it by the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (see PARA 620 note 3): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1); Interpretation Act 1978 s 17(2).

5 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(1)(a)-(e). As to the meaning of 'dangerous occurrence' see PARA 400.

6 'Responsible person' means (1) in the case of (a) a mine, the manager of that mine; (b) a quarry, the operator of that quarry; (c) a closed tip, the owner of the mine with which that tip is associated; (d) an offshore installation (otherwise than in the case of a disease reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5: see PARA 405 et seq), the duty holder for the purposes of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (see PARA 733 note 1) provided that for the purposes of this provision reg 3(2)(c) of those Regulations is to be deemed not to apply; (e) a dangerous occurrence at a pipeline (being an incident to which the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 14(a)-(f) applies: see PARA 400), the owner of that pipeline; (f) a dangerous occurrence at a well, the person appointed by a licensee to execute the function of organising and supervising the drilling of, and all operations to be carried out by means of, that well or, where no such person has been appointed, the licensee (and, for this purpose, 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3); (g) a diving project (otherwise than in the case of a disease reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5: see PARA 405 et seq), the diving contractor; (h) a vehicle to which Sch 2 Pt I para 16 or Sch 2 Pt I para 17 applies (see PARA 400), the operator of the vehicle; (2) (where head (1) does not apply) in the case of the death of or other injury to an employee reportable under reg 3 or of a disease suffered by an employee reportable under reg 5, his employer; and (3) in any other case, the person for the time being having control of the premises in connection with the carrying on by him of any trade,



business or other undertaking (whether for profit or not) at which, or in connection with the work at which, the accident or dangerous occurrence reportable under reg 3, or case of disease reportable under reg 5, happened: reg 2(1) (definition amended by SI 1997/2776; SI 1999/2024; and SI 2005/3117). As to the meaning of 'disease' see PARA 405 note 4.

'Mine' means a mine within the meaning of the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1) and for these purposes includes a closed tip within the meaning of the Mines and Quarries (Tips) Act 1969 s 2(2)(b) which is associated with that mine (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 541); 'quarry' means a quarry within the meaning of the Quarries Regulations 1999, SI 1999/2024, reg 3, and 'operator' in relation to a quarry has the meaning assigned to it by those 1999 regulations (see PARA 838 et seq); 'offshore installation' has the meaning assigned to it by the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 4(2) (see PARA 305 note 14); 'pipeline' and 'pipeline works' have the meaning assigned to them by art 6(2) (see PARA 305 note 20); 'well' includes any devices or structures on top of a well; 'diving project' and 'diving contractor' have the meanings assigned to them by the Diving at Work Regulations 1997, SI 1997/2776 (see PARAS 591 note 1, 592); 'operator', in relation to a vehicle to which the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 16 or Sch 2 Pt I para 17 applies, means (i) a person who holds an operator's licence for the use of that vehicle for the carriage of goods on a road; except that whereby the vehicle is included in a licence held by a holding company and that company is not operating the vehicle at the relevant time, the 'operator' is the subsidiary company specified in the application made under the relevant regulation or, if more than one subsidiary company is so specified, whichever one is operating the vehicle at the relevant time, and for these purposes 'holding company' and 'subsidiary company' have the same meanings as in the relevant regulations (see **ROAD TRAFFIC**); or (ii) where no such licence is held, (A) (in the case of a vehicle which is not registered in the United Kingdom) means the driver of the vehicle; or (B) (in the case of any other vehicle) means the keeper of the vehicle; and for this purpose, where the vehicle is on hire or lease to any person, that person is to be treated as its keeper; but where an employee who would otherwise be the operator of a vehicle in accordance with head (B) uses that vehicle for the carriage of any dangerous goods on behalf of his employer, that employer is, (notwithstanding that head) to be regarded as the operator of the vehicle concerned; and 'owner' means (aa) in relation to a mine, the person who is for the time being entitled to work it; (bb) in relation to a pipeline, the person who is for the time being entitled to control the flow of anything through that pipeline or through that pipeline once it is commissioned: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1) (amended by SI 1997/2776; SI 1999/2024; and SI 2004/568); Interpretation Act 1978 s 17(2).

7 As to the meaning of 'enforcing authority' see PARA 352 note 2.

8 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(1)(i). Regulation 3(1)(i) does not apply to a self-employed person who is injured at premises of which he is the owner or occupier: reg 10(5). As to the meaning of 'self-employed person' see PARA 302 note 5. Cf note 10.

The duty under reg 3(1)(i) is not confined to a duty to report accidents etc to employees: *Woking Borough Council v BHS plc* (1994) 159 JP 427, DC; considered in *Staffordshire Borough Council v Tillington Hall Hotel Ltd* (unreported, 20 June 2000), DC.

9 'Approved' means approved for the time being in writing for these purposes by the Health and Safety Executive and published in such form as the Executive considers appropriate: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). For the approved forms see Form F2508 (report of an injury or a dangerous occurrence), Form F2508A (report of a disease), Form OIR (report of an injury or a dangerous occurrence offshore). As to the Health and Safety Executive see PARA 361 et seq.

10 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(1)(ii). Regulation 3(1)(ii) applies to a self-employed person who is injured at premises of which he is the owner or occupier (other than in the case of death) and it is to be sufficient compliance with that requirement if that self-employed person makes arrangements for the report to be sent to the relevant enforcing authority by some other person: reg 10(5). Cf note 8.

11 At the date at which this title states the law, online reporting was available at [www.hse.gov.uk/riddor](http://www.hse.gov.uk/riddor). The telephone number of the Incident Contact Centre was 0845 300 9923 and the fax number was 0845 300 9924. The Incident Contact Centre forwards the relevant information to the appropriate enforcing authority.

12 In subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10: see note 1.

13 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(2).

14 See the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 8, Sch 5; and PARA 409.

15 See the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 9, Sch 6; and PARA 409.

16 In the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163: see the text and notes 1-15; and PARA 400 et seq. The 1995 regulations are known colloquially as 'RIDDOR'.

17 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 13(1).

18 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 13(2).

19 The 1995 regulations apply to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as they apply within Great Britain: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 12; Interpretation Act 1978 s 17(2).

20 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 11. As to offences and penalties see generally PARA 852 et seq.

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#### **400. Dangerous occurrences; in general.**

A 'dangerous occurrence' is an occurrence which arises out of or in connection with work<sup>1</sup> and is of a specified class<sup>2</sup>.

The following are dangerous occurrences:

- 149 (1) the collapse of, the overturning of, or the failure of any load-bearing part of any:
  - 9
  - 14. (a) lift or hoist;
  - 15. (b) crane or derrick;
  - 16. (c) mobile powered access platform;
  - 17. (d) access cradle or window-cleaning cradle;
  - 18. (e) excavator;
  - 19. (f) pile-driving frame or rig having an overall height, when operating, of more than 7 metres; or
  - 20. (g) fork lift truck;
  - 10
- 150 (2) the failure of any closed vessel (including a boiler or boiler tube) or of any associated pipework, in which the internal pressure was above or below atmospheric pressure, where the failure has the potential to cause the death of any person;
- 151 (3) the failure of any freight container<sup>3</sup> in any of its load-bearing parts while it is being raised, lowered or suspended;
- 152 (4) any unintentional incident in which plant or equipment either:
  - 11
  - 21. (a) comes into contact with an uninsulated overhead electric line in which the voltage exceeds 200 volts; or
  - 22. (b) causes an electrical discharge from such an electric line by coming into close proximity to it;
  - 12
- 153 (5) electrical short circuit or overload attended by fire or explosion which results in the stoppage of the plant involved for more than 24 hours or which has the potential to cause the death of any person;
- 154 (6) any of the following incidents involving explosives<sup>4</sup>:
  - 13
  - 23. (a) any unintentional fire, explosion or ignition at a site where explosives are manufactured by a person who holds a licence, or who does not hold a licence but is required to, in respect of that manufacture under the Manufacture and Storage of Explosives Regulations 2005, or where explosives are stored by a person who holds a licence or is registered, or who is not licensed but is required to be in the absence of any registration, in respect of that storage under those Regulations;
  - 24. (b) the unintentional explosion or ignition of explosives at a place other than a site described in head (a) above, not being one caused by the unintentional discharge of a weapon where, apart from that unintentional discharge, the weapon and explosives functioned as they were designed to do, or where a fail-safe device or

- safe system of work functioned so as to prevent any person from being injured in consequence of the explosion or ignition;
25. (c) a misfire (other than one at a mine<sup>5</sup> or quarry<sup>6</sup> or inside a well<sup>7</sup> or one involving a weapon) except where a fail-safe device or safe system of work functioned so as to prevent any person from being endangered in consequence of the misfire;
  26. (d) the failure of the shots in any demolition operation to cause the intended extent of collapse or direction of fall of a building or structure;
  27. (e) the projection of material (other than at a quarry) beyond the boundary of the site on which the explosives are being used or beyond the danger zone in circumstances such that any person was or might have been injured thereby;
  28. (f) any injury to a person (other than at a mine or quarry or one otherwise reportable under the relevant regulations<sup>8</sup>) involving first aid or medical treatment resulting from the explosion or discharge of any explosives or detonator or from any intentional fire or ignition;
- 14
- 155 (7) any accident<sup>9</sup> or incident which resulted or could have resulted in the release or escape of a biological agent<sup>10</sup> likely to cause severe human infection or illness;
  - 156 (8) any incident in which:
- 15
29. (a) the malfunction of a radiation generator<sup>11</sup> or its ancillary equipment used in fixed or mobile industrial radiography, the irradiation of food or the processing of products by irradiation, causes it to fail to de-energise at the end of the intended exposure period; or
  30. (b) the malfunction of equipment used in fixed or mobile industrial radiography or gamma irradiation causes a radioactive source to fail to return to its safe position by the normal means at the end of the intended exposure period;
- 16
- 157 (9) any incident in which breathing apparatus malfunctions while in use or during testing immediately prior to use in such a way that had the malfunction occurred while the apparatus was in use it would have posed a danger to the health or safety of the user; but this does not apply to breathing apparatus while it is being used in a mine or maintained or tested as part of a routine maintenance procedure;
  - 158 (10) any of the following incidents in relation to a diving project<sup>12</sup>:
- 17
31. (a) the failure or the endangering of any lifting equipment associated with the diving operation, or life support equipment, including control panels, hoses and breathing apparatus, which puts a diver at risk;
  32. (b) any damage to, or endangering of, the dive platform, or any failure of the dive platform to remain on station, which puts a diver at risk;
  33. (c) the trapping of a diver;
  34. (d) any explosion in the vicinity of a diver; or
  35. (e) any uncontrolled ascent or any omitted decompression which puts a diver at risk;
- 18
- 159 (11) the complete or partial collapse of:
- 19
36. (a) any scaffold which is more than 5 metres in height which results in a substantial part of the scaffold falling or overturning, or which is erected over or adjacent to water in circumstances such that there would be a risk of drowning to a person falling from the scaffold into the water; or
  37. (b) the suspension arrangements (including any outrigger) of any slung or suspended scaffold which causes a working platform or cradle to fall;
- 20

160 (12) any unintended collision of a train<sup>13</sup> with any other train or vehicle, other than one otherwise reportable<sup>14</sup>, which caused, or might have caused, the death of, or major injury<sup>15</sup> to, any person;

161 (13) any of the following incidents in relation to a well<sup>16</sup>:  
21

- 38. (a) a blow-out (that is to say an uncontrolled flow of well-fluids from a well);
- 39. (b) the coming into operation of a blow-out prevention or diversion system to control a flow from a well where normal control procedures fail;
- 40. (c) the detection of hydrogen sulphide in the course of operations at a well or in samples of well-fluids from a well where the presence of hydrogen sulphide in the reservoir being drawn on by the well was not anticipated by the responsible person before that detection;
- 41. (d) the taking of precautionary measures additional to any contained in the original drilling programme following failure to maintain a planned minimum separation distance between wells drilled from a particular installation; or
- 42. (e) the mechanical failure of any safety critical element of a well (and for this purpose the safety critical element of a well is any part of a well whose failure would cause or contribute to, or whose purpose is to prevent or limit the effect of, the unintentional release of fluids from a well or a reservoir being drawn on by a well);

22  
162 (14) the following incidents in respect of a pipeline or pipeline works<sup>17</sup>:  
23

- 43. (a) the uncontrolled or accidental escape of anything from, or inrush of anything into, a pipeline which has the potential to cause the death of, major injury or damage to the health of any person or which results in the pipeline being shut down for more than 24 hours;
- 44. (b) the unintentional ignition of anything in a pipeline or of anything which, immediately before it was ignited, was in a pipeline;
- 45. (c) any damage to any part of a pipeline which has the potential to cause the death of, major injury or damage to the health of any person or which results in the pipeline being shut down for more than 24 hours;
- 46. (d) any substantial and unintentional change in the position of a pipeline requiring immediate attention to safeguard the integrity or safety of a pipeline;
- 47. (e) any unintentional change in the subsoil or seabed in the vicinity of a pipeline which has the potential to affect the integrity or safety of a pipeline;
- 48. (f) any failure of any pipeline isolation device, equipment or system which has the potential to cause the death of, major injury or damage to the health of any person or which results in the pipeline being shut down for more than 24 hours; or
- 49. (g) any failure of equipment involved with pipeline works which has the potential to cause the death of, major injury or damage to the health of any person;

24  
163 (15) the following incidents on fairground equipment<sup>18</sup> in use or under test:  
25

- 50. (a) the failure of any load-bearing part;
- 51. (b) the failure of any part designed to support or restrain passengers; or
- 52. (c) the derailment or the unintended collision of cars or trains;

26  
164 (16) any incident involving a road tanker<sup>19</sup> or tank container<sup>20</sup> used for the carriage<sup>21</sup> of dangerous goods<sup>22</sup> in which:  
27

- 53. (a) the road tanker or vehicle carrying the tank container overturns (including turning onto its side);
- 54. (b) the tank carrying the dangerous goods is seriously damaged;
- 55. (c) there is an uncontrolled release or escape of the dangerous goods being carried; or

56. (d) there is a fire involving the dangerous goods being carried;  
 28  
 165 (17) any incident involving a vehicle used for the carriage of dangerous goods,  
 other than a vehicle to which head (16) above applies, where there is:  
 29  
 57. (a) an uncontrolled release or escape of the dangerous goods being carried in  
 such a quantity as to have the potential to cause the death of, or major injury to,  
 any person; or  
 58. (b) a fire which involves the dangerous goods being carried<sup>23</sup>.  
 30

The following are also dangerous occurrences and are reportable except in relation to offshore workplaces<sup>24</sup>:

- 166 (i) any unintended collapse or partial collapse of:  
 31  
 59. (A) any building or structure (whether above or below ground) under  
 construction, reconstruction, alteration or demolition which involves a fall of more  
 than 5 tonnes of material;  
 60. (B) any floor or wall of any building (whether above or below ground) used as a  
 place of work; or  
 61. (C) any false-work;  
 32  
 167 (ii) an explosion or fire occurring in any plant or premises which results in the  
 stoppage of that plant or as the case may be the suspension of normal work in  
 those premises for more than 24 hours, where the explosion or fire was due to the  
 ignition of any material;  
 168 (iii) the sudden, uncontrolled release:  
 33  
 62. (A) inside a building of 100 kilograms or more of a flammable liquid<sup>25</sup>, of 10  
 kilograms or more of a flammable liquid at a temperature above its normal boiling  
 point, or of 10 kilograms or more of a flammable gas<sup>26</sup>; or  
 63. (B) in the open air, of 500 kilograms or more of any of the substances referred  
 to in head (A) above;  
 34  
 169 (iv) the accidental release or escape of any substance in a quantity sufficient to  
 cause the death, major injury or any other damage to the health of any person<sup>27</sup>.

1 As to the meaning of 'work' see PARA 302 note 1.

2 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the specified classes see Sch 2 Pt I (paras 1-21); and the text and notes 3-27; Sch 2 Pt II (paras 22-40) (mines); and PARA 401; Sch 2 Pt III (paras 41-48) (quarries); and PARA 402; Sch 2 Pt IV (paras 49-72) (certain places where a relevant transport system is operated); and PARA 403; and Sch 2 Pt V (paras 73-83) (offshore workplaces); and PARA 404.

3 For these purposes, 'freight container' means a container as defined in the Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 2(1) (see PARA 714 note 1); Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 3(2).

4 For these purposes, 'explosives' has the same meaning as in the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see **EXPLOSIVES**); and 'danger zone' means the area from which persons have been excluded or forbidden to enter to avoid being endangered by any explosion or ignition of explosives: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 6(2) (substituted by SI 2005/1082).

5 As to the meaning of 'mine' for these purposes see PARA 399 note 6.

- 6 As to the meaning of 'quarry' for these purposes see PARA 399 note 6.
- 7 As to the meaning of 'well' for these purposes see PARA 399 note 6.
- 8 le reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163.
- 9 As to the meaning of 'accident' see PARA 399 note 2.
- 10 As to the meaning of 'biological agent' see PARA 399 note 4.
- 11 For these purposes, 'radiation generator' means any electrical equipment emitting ionising radiation and containing components operating at a potential difference of more than 5kV: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 8(2) (substituted by SI 1999/3232).
- 12 As to the meaning of 'diving project' for these purposes see PARA 399 note 6.
- 13 As to the meaning of 'train' see PARA 399 note 1.
- 14 le reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt IV: see PARA 403.
- 15 As to the meaning of 'major injury' see PARA 399 note 4.
- 16 le other than a well sunk for the purpose of the abstraction of water.
- 17 As to the meanings of 'pipeline' and 'pipeline works' for these purposes see PARA 399 note 6.
- 18 As to the meaning of 'fairground equipment' see PARA 531 note 3.
- 19 As to road tankers see further **CARRIAGE AND CARRIERS**.
- 20 As to tank containers see further **CARRIAGE AND CARRIERS**.
- 21 For these purposes, 'carriage' has the same meaning as that term has in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1) (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3)) (see **CARRIAGE AND CARRIERS**): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1), Sch 2 Pt I para 17A (reg 2(1) amended by SI 2007/1573; Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 17A added by SI 1996/2092; substituted by SI 2004/568; and amended by SI 2007/1573).
- 22 For these purposes, 'dangerous goods' has the same meaning as that term has in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1) (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3)) (see PARA 555 note 2): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 17A (as added, substituted and amended: see note 21).
- 23 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I paras 1-17A (amended by SI 1997/2776; SI 1999/3232; SI 1996/2092; SI 2004/568; SI 2005/1082; SI 2007/1573).
- 24 As to the meaning of 'offshore workplace' see PARA 399 note 1.
- 25 For these purposes, 'flammable liquid' and 'flammable gas' mean respectively a liquid or gas so classified in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 1994, SI 1994/3247, reg 5(2), (3) or (5) (revoked: see now the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4; and PARA 571): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 20(2).
- 26 See note 25.
- 27 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I paras 18-21.

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#### **401. Dangerous occurrences reportable in relation to mines.**

The following dangerous occurrences<sup>1</sup> are reportable in relation to mines<sup>2</sup>:

- 170 (1) the ignition, below ground, of any gas (other than gas in a safety lamp) or of any dust;
  - 171 (2) the accidental ignition of any gas in part of a firedamp drainage system on the surface or in an exhauster house;
  - 172 (3) the outbreak of any fire below ground;
  - 173 (4) an incident where any person in consequence of any smoke or any other indication that a fire may have broken out below ground has been caused to leave any place<sup>3</sup>;
  - 174 (5) the outbreak of any fire on the surface which endangers the operation of any winding or haulage apparatus installed at a shaft or unworkable outlet or of any mechanically operated apparatus for producing ventilation below ground;
  - 175 (6) any violent outburst of gas together with coal or other solid matter into the mine workings except when such outburst is caused intentionally;
  - 176 (7) the breakage of any rope, chain, coupling, balance rope, guide rope, suspension gear or other gear used for or in connection with the carrying of persons through any shaft or staple shaft;
  - 177 (8) the breakage or unintentional uncoupling of any rope, chain, coupling, rope tensioning system or other gear used for or in connection with the transport of persons below ground, or breakage of any belt, rope or other gear used for or in connection with a belt conveyor designated by the mine manager as a man-riding conveyor;
  - 178 (9) an incident where any conveyance being used for the carriage of persons is overwound; or any conveyance not being so used is overwound and becomes detached from its winding rope; or any conveyance operated by means of the friction of a rope on a winding sheave is brought to rest by the apparatus provided in the headframe of the shaft or in the part of the shaft below the lowest landing for the time being in use, being apparatus provided for bringing the conveyance to rest in the event of its being overwound;
  - 179 (10) the stoppage of any ventilating apparatus (other than an auxiliary fan) which causes a substantial reduction in ventilation of the mine lasting for a period exceeding 30 minutes, except when for the purpose of planned maintenance;
  - 180 (11) the collapse of any headframe, winding engine house, fan house or storage bunker;
  - 181 (12) at any mine an incident where:
- 35
- 64. (a) breathing apparatus or a smoke helmet or other apparatus serving the same purpose or a self-rescuer, while being used, fails to function safely or develops a defect likely to affect its safe working; or
  - 65. (b) immediately after using and arising out of the use of breathing apparatus or a smoke helmet or other apparatus serving the same purpose or a self-rescuer, any person receives first aid or medical treatment by reason of his unfitness or suspected unfitness at the mine;



- 182 (13) an incident in which any person suffers an injury (not being a major injury<sup>4</sup> or one otherwise reportable<sup>5</sup>) which results from an explosion or discharge of any blasting material or device<sup>6</sup> for which he receives first aid or medical treatment at the mine;
- 183 (14) an incident where any apparatus is used (other than for the purpose of training and practice) which has been provided at the mine in order to enable persons to leave the mine safely<sup>7</sup> or where persons leave the mine when apparatus and equipment normally used by persons to leave the mine is unavailable;
- 184 (15) any inrush of noxious or flammable gas from old workings;
- 185 (16) any inrush of water or material which flows when wet from any source;
- 186 (17) any movement of material or any fire or any other event which indicates that a tip to which Part I of the Mines and Quarries (Tips) Act 1969<sup>8</sup> applies, is or is likely to become insecure;
- 187 (18) any incident where an underground locomotive when not used for testing purposes is brought to rest by means other than its safety circuit protective devices or normal service brakes;
- 188 (19) any fall of ground, not being part of the normal operations at a mine, which results from a failure of an underground support system and prevents persons travelling through the area affected by the fall or which otherwise exposes them to danger<sup>9</sup>.

1 As to the meaning of 'dangerous occurrence' see PARA 400.

2 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'mine' for these purposes see PARA 399 note 6.

3 ie pursuant to the Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 11(1) (contained in the Coal and Other Mines (Fire and Rescue) Order 1956, SI 1956/1768, Sch 1) or the Mines and Quarries Act 1954 s 79: see PARAS 830-831.

4 As to the meaning of 'major injury' see PARA 399 note 4.

5 ie reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(2): see PARA 399.

6 ie within the meaning of the Mines and Quarries Act 1954 s 69(4) (ie explosives and any articles designed for the purpose of breaking up or loosening minerals by means of explosion, the expansion of gas, the change of a substance from one physical state to another or a chemical reaction not constituting combustion); and see PARAS 811-812, 817.

7 ie in accordance with the Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 4: see PARA 758.

8 ie the Mines and Quarries (Tips) Act 1969 Pt I (ss 1-10): see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 540 et seq.

9 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1), Sch 2 Pt II (paras 22-40).

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#### **402. Dangerous occurrences reportable in relation to quarries.**

The following dangerous occurrences<sup>1</sup> are reportable in relation to quarries<sup>2</sup>:

- 189 (1) the collapse of any storage bunker;
- 190 (2) the sinking of any water-borne craft or hovercraft;
- 191 (3) an incident in which any person suffers an injury (not otherwise reportable under the relevant regulations<sup>3</sup>) which results from an explosion or from the discharge of any explosives<sup>4</sup> for which he receives first aid or medical treatment at the quarry;
- 192 (4) any incident in which any substance is ascertained to have been projected beyond a quarry boundary as a result of blasting operations in circumstances in which any person was or might have been endangered;
- 193 (5) any misfire<sup>5</sup>;
- 194 (6) any event (including any movement of material or any fire) which indicates that a tip to which the Quarries Regulations 1999<sup>6</sup> apply, is or is likely to become insecure;
- 195 (7) any movement or failure of an excavated slope or face which:
- 37 66. (a) has the potential to cause the death of any person; or
- 67. (b) adversely affects any building, contiguous land, transport system, footpath, public utility or service, watercourse, reservoir or area of public access;
- 38 196 (8) any explosion or fire occurring in any large vehicle or mobile plant<sup>7</sup> which results in the stoppage of that vehicle or plant for more than 24 hours and which affects any place where persons normally work<sup>8</sup> or the route of egress from such a place<sup>9</sup>.

1 As to the meaning of 'dangerous occurrence' see PARA 400.

2 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'quarry' for these purposes see PARA 399 note 6.

3 Ie under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163.

4 For these purposes, 'explosives' has the same meaning as in the Quarries Regulations 1999, SI 1999/2024, reg 2(1) (see PARA 842 note 1): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1), Sch 2 Pt III para 43(2) (amended by SI 1999/2024).

5 Ie as defined by the Quarries Regulations 1999, SI 1999/2024, reg 2(1): see PARA 842 note 11.

6 Ie the Quarries Regulations 1999, SI 1999/2024: see PARA 838 et seq.

7 For these purposes, 'large vehicle or mobile plant' means (1) a dump truck having a load capacity of at least 50 tonnes; or (2) an excavator having a bucket capacity of at least 5 cubic metres: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt III para 48(2).

8 As to the meaning of 'work' see PARA 302 note 1.

9 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt III (paras 41-48) (amended by SI 1999/2024).



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**403. Dangerous occurrences reportable in respect of relevant transport systems.**

The following dangerous occurrences<sup>1</sup> are reportable in respect of relevant transport systems<sup>2</sup> where the occurrence takes place other than at a factory<sup>3</sup>, dock<sup>4</sup>, construction site<sup>5</sup>, mine<sup>6</sup> or quarry<sup>7</sup>:

- 197 (1) any collision in which a passenger train<sup>8</sup> collides with another train;
  - 198 (2) any case where a passenger train or any part of such a train unintentionally leaves the rails;
  - 199 (3) any collision between trains, other than one between a passenger train and another train, on a running line<sup>9</sup> where any train sustains damage as a result of the collision, and any such collision in a siding which results in a running line being obstructed;
  - 200 (4) any derailment, of a train other than a passenger train, on a running line, except a derailment which occurs during shunting operations and does not obstruct any other running line;
  - 201 (5) any derailment, of a train other than a passenger train, in a siding which results in a running line being obstructed;
  - 202 (6) any case of a train striking a buffer stop, other than in a siding, where damage is caused to the train;
  - 203 (7) any case of a train striking any cattle or horse, whether or not damage is caused to the train, or striking any other animal if, in consequence, damage (including damage to the windows of the driver's cab but excluding other damage consisting solely in the breakage of glass) is caused to the train necessitating immediate temporary or permanent repair;
  - 204 (8) any case of a train on a running line striking or being struck by any object which causes damage (including damage to the windows of the driver's cab but excluding other damage consisting solely in the breakage of glass) necessitating immediate temporary or permanent repair or which might have been liable to derail the train;
  - 205 (9) any case of a train, other than one on a railway, striking or being struck by a road vehicle<sup>10</sup>;
  - 206 (10) any case of a passenger train, or any other train not fitted with continuous self-applying brakes, becoming unintentionally divided;
  - 207 (11) any of the following classes of accident<sup>11</sup> which occurs or is discovered whilst the train is on a running line:
- 39
- 68. (a) the failure of an axle;
  - 69. (b) the failure of a wheel or tyre, including a tyre loose on its wheel;
  - 70. (c) the failure of a rope or the fastenings thereof or of the winding plant or equipment involved in working an incline;
  - 71. (d) any fire, severe electrical arcing or fusing in or on any part of a passenger train or a train carrying dangerous goods<sup>12</sup>;
  - 72. (e) in the case of any train other than a passenger train, any severe electrical arcing or fusing, or any fire which was extinguished by a fire-fighting service; or
  - 73. (f) any other failure of any part of a train which is likely to cause an accident to that or any other train or to kill or injure any person;

40

- 208 (12) any case of a train striking a road vehicle or gate at a level crossing;
- 209 (13) any case of a train running onto a level crossing when not authorised to do so;
- 210 (14) a failure of the equipment at a level crossing which could endanger users of the road or path crossing the railway;
- 211 (15) the failure of a rail in a running line or of a rack rail, which results in:

41

- 74. (a) a complete fracture of the rail through its cross-section; or
- 75. (b) a piece becoming detached from the rail which necessitates an immediate stoppage of traffic or the immediate imposition of a speed restriction lower than that currently in force;

42

- 212 (16) a buckle of a running line which necessitates an immediate stoppage of traffic or the immediate imposition of a speed restriction lower than that currently in force;
- 213 (17) any case of an aircraft or a vehicle of any kind landing on, running onto or coming to rest foul of the line, or damaging the line, which causes damage which obstructs the line or which damages any railway equipment at a level crossing;
- 214 (18) the runaway of an escalator, lift or passenger conveyor;
- 215 (19) any fire or severe arcing or fusing which seriously affects the functioning of signalling equipment;
- 216 (20) any fire affecting the permanent way or works of a relevant transport system which necessitates the suspension of services over any line, or the closure of any part of a station or signal box or other premises, for a period:

43

- 76. (a) in the case of a fire affecting any part of a relevant transport system below ground, of more than 30 minutes; and
- 77. (b) in any other case, of more than one hour;

44

- 217 (21) any other fire which causes damage which has the potential to affect the running of a relevant transport system;
- 218 (22) the following classes of accident where they are likely either to cause an accident to a train or to endanger any person:

45

- 78. (a) the failure of a tunnel, bridge, viaduct, culvert, station, or other structure or any part thereof including the fixed electrical equipment of an electrified relevant transport system;
- 79. (b) any failure in the signalling system which endangers or which has the potential to endanger the safe passage of trains other than a failure of a traffic light controlling the movement of vehicles on a road;
- 80. (c) a slip of a cutting or of an embankment;
- 81. (d) flooding of the permanent way;
- 82. (e) the striking of a bridge by a vessel or by a road vehicle or its load; or
- 83. (f) the failure of any other portion of the permanent way or works not specified above;

46

- 219 (23) any case where planned procedures or arrangements have been activated in order to control risks arising from an incident of undue passenger congestion at a station unless that congestion has been relieved within a period of time allowed for by those procedures or arrangements;
- 220 (24) any case where a train, travelling on a running line or entering a running line from a siding, passes without authority a signal displaying a stop aspect unless the stop aspect was not displayed in sufficient time for the driver to stop safely at the signal<sup>13</sup>.

- 1 As to the meaning of 'dangerous occurrence' see PARA 400.
- 2 As to the meaning of 'relevant transport system' for these purposes see PARA 399 note 2.
- 3 For these purposes, 'factory' has the meaning assigned to it by the Factories Act 1961 s 175 (see PARA 318 et seq): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1).
- 4 For these purposes, 'dock' means a place to which the Factories Act 1961 s 125(1) applies (see PARA 311): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1).
- 5 For these purposes, 'construction site' means any place where there are carried out building operations or works of engineering construction such that those operations or works fall within the Factories Act 1961 s 127(1) (see PARA 315): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1).
- 6 As to the meaning of 'mine' see PARA 399 note 6.
- 7 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'quarry' see PARA 399 note 6.
- 8 'Passenger train' means a train carrying passengers or made available for the carriage of passengers: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'train' see PARA 399 note 1.
- 9 'Running line' means any line which is not a siding and is ordinarily used for the passage of trains: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1).
- 10 'Road vehicle' means any vehicle, other than a train, on a road: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'road' see PARA 399 note 1.
- 11 As to the meaning of 'accident' see PARA 399 note 2.
- 12 For these purposes, 'dangerous goods' has the meaning assigned to it in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1) (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3)) (see PARA 555 note 2): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1), Sch 2 Pt IV para 59(2) (reg 2(1) amended by SI 2007/1573; Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt IV para 59(2) substituted by SI 2004/568; and amended by SI 2007/1573).
- 13 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt IV (paras 49-72) (amended by SI 1996/2092; SI 1999/2244; SI 2004/568; and SI 2007/1573).

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#### **404. Dangerous occurrences reportable in respect of an offshore workplace.**

The following dangerous occurrences<sup>1</sup> are reportable in respect of an offshore workplace<sup>2</sup>:

- 221 (1) any unintentional release of petroleum hydrocarbon on or from an offshore installation<sup>3</sup> which:
  - 47 84. (a) results in a fire or explosion, or the taking of action to prevent or limit the consequences of a potential fire or explosion; or
  - 85. (b) has the potential to cause death or major injury to any person;
- 48 222 (2) any fire or explosion at an offshore installation, other than one to which head (1) above applies, which results in the stoppage of plant or the suspension of normal work<sup>4</sup>;
- 223 (3) the uncontrolled or unintentional release or escape of any substance (other than petroleum hydrocarbon) on or from an offshore installation which has the potential to cause the death of, major injury<sup>5</sup> to or damage to the health of any person;
- 224 (4) any unintended collapse of any offshore installation or any unintended collapse of any part thereof or any plant thereon which jeopardises the overall structural integrity of the installation;
- 225 (5) any of the following occurrences having the potential to cause death or major injury:
  - 49 86. (a) the failure of equipment required to maintain a floating offshore installation on station;
  - 87. (b) the dropping of any object on an offshore installation or on an attendant vessel or into the water adjacent to an installation or vessel; or
  - 88. (c) damage to or on an offshore installation caused by adverse weather conditions;
- 50 226 (6) any collision between a vessel or aircraft and an offshore installation which results in damage to the installation, the vessel or the aircraft;
- 227 (7) any occurrence with the potential for a collision between a vessel and an offshore installation where, had a collision occurred, it would have been liable to jeopardise the overall structural integrity of the offshore installation;
- 228 (8) any subsidence or local collapse of the seabed likely to affect the foundations of an offshore installation or the overall structural integrity of an offshore installation;
- 229 (9) any incident involving loss of stability or buoyancy of a floating offshore installation;
- 230 (10) any evacuation, other than one arising out of an incident reportable under any other provision of the relevant regulations<sup>6</sup>, of an offshore installation, in whole or part, in the interests of safety;
- 231 (11) any case of a person falling more than 2 metres into water, unless the fall results in death or injury otherwise required<sup>7</sup> to be reported<sup>8</sup>.

- 1 As to the meaning of 'dangerous occurrence' see PARA 400.
- 2 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1). As to the meaning of 'offshore workplace' see PARA 399 note 1.
- 3 As to the meaning of 'offshore installation' see PARA 399 note 6.
- 4 As to the meaning of 'work' see PARA 302 note 1.
- 5 As to the meaning of 'major injury' see PARA 399 note 4.
- 6 Is reportable under any other provision of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163.
- 7 Is reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3(1)(a)-(d): see PARA 399.
- 8 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1), Sch 2 Pt V (paras 73-83).



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#### **405. Notification of occupational diseases.**

Subject to certain exceptions<sup>1</sup>, and to the following provisions<sup>2</sup>, where:

- 232 (1) a person at work<sup>3</sup> suffers from any of the specified occupational diseases<sup>4</sup> and his work involves one of the specified corresponding activities<sup>5</sup>; or
- 233 (2) a person at an offshore workplace<sup>6</sup> suffers from any of the relevant specified diseases<sup>7</sup>,

the responsible person<sup>8</sup> must forthwith send a report of that fact to the relevant enforcing authority<sup>9</sup> on a form approved<sup>10</sup> for these purposes, unless he forthwith makes a report of it to the Health and Safety Executive by some other means so approved<sup>11</sup>. This requirement, however, applies only if:

- 234 (a) in the case of an employee<sup>12</sup>, the responsible person has received a written statement prepared by a registered medical practitioner<sup>13</sup> diagnosing the disease as one of those specified for these purposes; or
- 235 (b) in the case of a self-employed person<sup>14</sup>, that person has been informed, by a registered medical practitioner, that he is suffering from a disease so specified<sup>15</sup>;

and in the case of a self-employed person, it is a sufficient compliance with this requirement if that person makes arrangements for the report to be sent to the relevant enforcing authority by some other person<sup>16</sup>.

<sup>1</sup> Is subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10: see PARA 399.

<sup>2</sup> Is subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(2), (3): see the text and notes 12-16.

<sup>3</sup> As to the meaning of 'work' see PARA 302 note 1.

<sup>4</sup> Is a disease specified in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1), Sch 3 Pt I col 1: see PARA 406. 'Disease' includes a medical condition: reg 2(1).

<sup>5</sup> Is an activity specified in the corresponding entry in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 2: see PARA 406.

<sup>6</sup> As to the meaning of 'offshore workplace' see PARA 399 note 1.

<sup>7</sup> Is a disease specified in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt II: see PARA 407.

<sup>8</sup> As to the meaning of 'responsible person' see PARA 399 note 6.

<sup>9</sup> As to the meaning of 'enforcing authority' see PARA 352 note 2.

<sup>10</sup> As to the meaning of 'approved' see PARA 399 note 9.

<sup>11</sup> Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1). As to the Health and Safety Executive see PARA 361 et seq.

- 12 As to the meaning of 'employee' see PARA 302 note 4.
- 13 As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.
- 14 As to the meaning of 'self-employed person' see PARA 302 note 5.
- 15 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(2).
- 16 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(3).

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#### **406. Reportable occupational diseases; in general.**

The following conditions due to physical agents and the physical demands of work<sup>1</sup> are reportable occupational diseases<sup>2</sup>:

- 236 (1) inflammation, ulceration or malignant disease of the skin due to ionising radiation, malignant disease of the bones due to ionising radiation and blood dyscrasia due to ionising radiation, in respect of work with ionising radiation;
  - 237 (2) cataract due to electromagnetic radiation, in respect of work involving exposure to electromagnetic radiation (including radiant heat);
  - 238 (3) decompression illness and barotrauma resulting in lung or other organ damage, in respect of work involving breathing gases at increased pressure (including diving);
  - 239 (4) dysbaric osteonecrosis and cramp of the hand or forearm due to repetitive movements, in respect of work involving prolonged periods of handwriting, typing or other repetitive movements of the fingers, hand or arm;
  - 240 (5) subcutaneous cellulitis of the hand (beat hand), in respect of physically demanding work causing severe or prolonged friction or pressure on the hand;
  - 241 (6) bursitis or subcutaneous cellulitis arising at or about the knee due to severe or prolonged external friction or pressure at or about the knee (beat knee), in respect of physically demanding work causing severe or prolonged friction or pressure at or about the knee;
  - 242 (7) bursitis or subcutaneous cellulitis arising at or about the elbow due to severe or prolonged external friction or pressure at or about the elbow (beat elbow), in respect of physically demanding work causing severe or prolonged friction or pressure at or about the elbow;
  - 243 (8) traumatic inflammation of the tendons of the hand or forearm or of the associated tendon sheaths, in respect of physically demanding work, frequent or repeated movements, constrained postures or extremes of extension or flexion of the hand or wrist;
  - 244 (9) carpal tunnel syndrome, in respect of work involving the use of hand-held vibrating tools;
  - 245 (10) hand-arm vibration syndrome, in respect of work involving:
- 51
- 89. (a) the use of chain saws, brush cutters or hand-held or hand-fed circular saws in forestry or woodworking;
  - 90. (b) the use of hand-held rotary tools in grinding material or in sanding or polishing metal;
  - 91. (c) the holding of material being ground or metal being sanded or polished by rotary tools;
  - 92. (d) the use of hand-held percussive metal-working tools or the holding of metal being worked upon by percussive tools in connection with riveting, caulking, chipping, hammering, fettling or swaging;
  - 93. (e) the use of hand-held powered percussive drills or hand-held powered percussive hammers in mining, quarrying or demolition, or on roads or footpaths (including road construction); or

94. (f) the holding of material being worked upon by pounding machines in shoe manufacture<sup>3</sup>.  
52

The following infections due to biological agents<sup>4</sup> are reportable occupational diseases:

- 246 (i) anthrax, in respect of work involving handling infected animals, their products or packaging containing infected material or work on infected sites;  
247 (ii) brucellosis, in respect of work involving contact with animals or their carcasses (including any parts thereof) infected by brucella or the untreated products of the same, or with laboratory specimens or vaccines of or containing brucella;  
248 (iii) avian chlamydiosis, in respect of work involving contact with birds infected with chlamydia psittaci, or the remains or untreated products of such birds;  
249 (iv) ovine chlamydiosis, in respect of work involving contact with sheep infected with chlamydia psittaci or the remains or untreated products of such sheep;  
250 (v) hepatitis, in respect of work involving contact with human blood or human blood products or with any source of viral hepatitis;  
251 (vi) legionellosis, in respect of work on or near cooling systems which are located in the workplace and use water; or work on hot water service systems located in the workplace which are likely to be a source of contamination;  
252 (vii) leptospirosis, in respect of work in places which are or are liable to be infested by rats, fieldmice, voles or other small mammals, work at dog kennels or involving the care or handling of dogs or work involving contact with bovine animals or their meat products or pigs or their meat products;  
253 (viii) Lyme disease, in respect of work involving exposure to ticks (including in particular work by forestry workers, rangers, dairy farmers, game keepers and other persons engaged in countryside management);  
254 (ix) Q fever, in respect of work involving contact with animals, their remains or their untreated products;  
255 (x) rabies, in respect of work involving handling or contact with infected animals;  
256 (xi) streptococcus suis, in respect of work involving contact with pigs infected with streptococcus suis, or with the carcasses, products or residues of pigs so affected;  
257 (xii) tetanus, in respect of work involving contact with soil likely to be contaminated by animals;  
258 (xiii) tuberculosis, in respect of work with persons, animals, human or animal remains or any other material which might be a source of infection;  
259 (xiv) any infection reliably attributable to the performance of work with micro-organisms, work with live or dead human beings in the course of providing any treatment or service or in conducting any investigation involving exposure to blood or body fluids, work with animals or any potentially infected material derived from any of the above<sup>5</sup>.

The following conditions due to substances are reportable occupational diseases:

- 260 (A) poisonings by any of the specified substances<sup>6</sup>, in respect of any activity;  
261 (B) cancer of a bronchus or lung, in respect of:  
53  
95. (aa) work in or about a building where nickel is produced by decomposition of a gaseous nickel compound or where any industrial process which is ancillary or incidental to that process is carried on; or

96. (bb) work involving exposure to bis(chloromethyl) ether or any electrolytic chromium processes (excluding passivation) which involve hexavalent chromium compounds, chromate production or zinc chromate pigment manufacture;
- 54
- 262 (c) primary carcinoma of the lung where there is accompanying evidence of silicosis, in respect of any of the specified occupations<sup>7</sup>;
- 263 (d) cancer of the urinary tract, in respect of work involving exposure to any of the specified substances<sup>8</sup> or the manufacture of auramine or magenta;
- 264 (E) bladder cancer, in respect of work involving exposure to aluminium smelting using the Soderberg process;
- 265 (F) angiosarcoma of the liver, in respect of:
- 55
97. (aa) work in or about machinery or apparatus used for the polymerisation of vinyl chloride monomer, a process which, for these purposes, comprises all operations up to and including the drying of the slurry produced by the polymerisation and the packaging of the dried product; or
98. (bb) work in a building or structure in which any part of the process referred to in head (aa) above takes place;
- 56
- 266 (G) peripheral neuropathy, in respect of work involving the use or handling of or exposure to the fumes of or vapour containing n-hexane or methyl n-butyl ketone;
- 267 (H) chrome ulceration of the nose or throat or of the skin of the hands or forearm, in respect of work involving exposure to chromic acid or to any other chromium compound;
- 268 (I) folliculitis, acne and skin cancer, in respect of work involving exposure to mineral oil, tar, pitch or arsenic;
- 269 (J) pneumoconiosis (excluding asbestosis), in respect of any of the specified activities<sup>9</sup>;
- 270 (K) byssinosis, in respect of the spinning or manipulation of raw or waste cotton or flax or the weaving of cotton or flax, carried out in each case in a room in a factory, together with any other work carried out in such a room;
- 271 (L) mesothelioma, lung cancer and asbestosis, in respect of:
- 57
99. (aa) the working or handling of asbestos or any admixture of asbestos;
100. (bb) the manufacture or repair of asbestos textiles or other articles containing or composed of asbestos;
101. (cc) the cleaning of any machinery or plant used in any of those operations and of any chambers, fixtures and appliances for the collection of asbestos dust; or
102. (dd) substantial exposure to the dust arising from any of those operations;
- 58
- 272 (M) cancer of the nasal cavity or associated air sinuses, in respect of:
- 59
103. (aa) work in or about a building where wooden furniture is manufactured, work in a building used for the manufacture of footwear or components of footwear made wholly or partly of leather or fibre board, or work at a place used wholly or mainly for the repair of footwear made wholly or partly of leather or fibre board;
104. (bb) work in or about a factory building where nickel is produced by decomposition of a gaseous nickel compound or in any process which is ancillary or incidental thereto;
- 60
- 273 (N) occupational dermatitis, in respect of work involving exposure to any of the specified agents<sup>10</sup>;
- 274 (O) extrinsic alveolitis (including farmer's lung), in respect of exposure to moulds, fungal spores or heterologous proteins during work in:
- 61

- 105. (aa) agriculture, horticulture, forestry, cultivation of edible fungi or malt-working;
  - 106. (bb) loading, unloading or handling mouldy vegetable matter or edible fungi whilst it is being stored;
  - 107. (cc) caring for or handling birds; or
  - 108. (dd) handling bagasse;
- 62
- 275 (p) occupational asthma, with respect to work involving exposure to any of the specified agents<sup>11</sup>.

1 As to the meaning of 'work' see PARA 302 note 1.

2 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1)(a), Sch 3 Pt I. As to the meaning of 'disease' see PARA 405 note 4; and as to the requirement to report such diseases see PARA 405.

3 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I items 1-14.

4 As to the meaning of 'biological agent' see PARA 399 note 4.

5 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I items 15-27.

6 The specified substances for these purposes are (1) acrylamide monomer; (2) arsenic or one of its compounds; (3) benzene or a homologue of benzene; (4) beryllium or one of its compounds; (5) cadmium or one of its compounds; (6) carbon disulphide; (7) diethylene dioxide (dioxan); (8) ethylene oxide; (9) lead or one of its compounds; (10) manganese or one of its compounds; (11) mercury or one of its compounds; (12) methyl bromide; (13) nitrochlorobenzene, or a nitro- or amino- or chloro-derivative of benzene or of a homologue of benzene; (14) oxides of nitrogen; (15) phosphorus or one of its compounds: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 2 item 28.

7 The specified occupations for these purposes are (1) glass manufacture; (2) sandstone tunnelling or quarrying; (3) the pottery industry; (4) metal ore mining; (5) slate quarrying or slate production; (6) clay mining; (7) the use of siliceous materials as abrasives; (8) foundry work; (9) granite tunnelling or quarrying; or (10) stone cutting or masonry: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 3 item 30.

8 The specified substances for these purposes are (1) beta-naphthylamine or methylene-bis-orthochloroaniline; (2) diphenyl substituted by at least one nitro or primary amino group or by at least one nitro and primary amino group (including benzidine); (3) any of the substances mentioned in head (2) above if further ring substituted by halogeno, methyl or methoxy groups, but not by other groups; or (4) the salts of any of the substances mentioned in heads (1)-(3) above: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 3 item 31.

9 The specified activities for these purposes are (1)(a) the mining, quarrying or working of silica rock or the working of dried quartzose sand, any dry deposit or residue of silica or any dry admixture containing such materials (including any activity in which any of the aforesaid operations are carried out incidentally to the mining or quarrying of other minerals or to the manufacture of articles containing crushed or ground silica rock); or (b) the handling of any of the materials specified in the head (1)(a) above in or incidentally to any of the operations mentioned therein or substantial exposure to the dust arising from such operations; (2) the breaking, crushing or grinding of flint, the working or handling of broken, crushed or ground flint or materials containing such flint or substantial exposure to the dust arising from any of such operations; (3) sand blasting by means of compressed air with the use of quartzose sand or crushed silica rock or flint or substantial exposure to the dust arising from such sand blasting; (4) work in a foundry or the performance of, or substantial exposure to the dust arising from, any of the following operations: (a) the freeing of steel castings from adherent siliceous substance; or (b) the freeing of metal castings from adherent siliceous substance (i) by blasting with an abrasive propelled by compressed air, steam or a wheel, or (ii) by the use of power-driven tools; (5) the manufacture of china or earthenware (including sanitary earthenware, electrical earthenware and earthenware tiles) and any activity involving substantial exposure to the dust arising therefrom; (6) the grinding of mineral graphite or substantial exposure to the dust arising from such grinding; (7) the dressing of granite or any igneous rock by masons, the crushing of such materials or substantial exposure to the dust arising from such operations; (8) the use or preparation for use of an abrasive wheel or substantial exposure to the dust arising therefrom; (9)(a) work underground in any mine in which one of the objects of the mining operations is the getting of any material; (b) the working or handling above ground at any coal or tin mine of any materials

extracted therefrom or any operation incidental thereto; (c) the trimming of coal in any ship, barge, lighter, dock or harbour or at any wharf or quay; or (d) the sawing, splitting or dressing of slate or any operation incidental thereto; (10) the manufacture or work incidental to the manufacture of carbon electrodes by an industrial undertaking for use in the electrolytic extraction of aluminium from aluminium oxide and any activity involving substantial exposure to the dust therefrom; (11) boiler scaling or substantial exposure to the dust arising therefrom: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 3 item 39.

10 The specified agents for these purposes are (1) epoxy resin systems; (2) formaldehyde and its resins; (3) metalworking fluids; (4) chromate (hexavalent and derived from trivalent chromium); (5) cement, plaster or concrete; (6) acrylates and methacrylates; (7) colophony (rosin) and its modified products; (8) glutaraldehyde; (9) mercaptobenzothiazole, thiurams, substituted paraphenylene-diamines and related rubber processing chemicals; (10) biocides, anti-bacterials, preservatives or disinfectants; (11) organic solvents; (12) antibiotics and other pharmaceuticals and therapeutic agents; (13) strong acids, strong alkalis, strong solutions (eg brine) and oxidising agents including domestic bleach or reducing agents; (14) hairdressing products including in particular dyes, shampoos, bleaches and permanent waving solutions; (15) soaps and detergents; (16) plants and plant-derived material including in particular the daffodil, tulip and chrysanthemum families, the parsley family (carrots, parsnips, parsley and celery), garlic and onion, hardwoods and the pine family; (17) fish, shell-fish or meat; (18) sugar or flour; or (19) any other known irritant or sensitising agent including in particular any chemical bearing the warning 'may cause sensitisation by skin contact' or 'irritating to the skin': Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 3 item 45.

11 The specified agents for these purposes are (1) isocyanates; (2) platinum salts; (3) fumes or dust arising from the manufacture, transport or use of hardening agents (including epoxy resin curing agents) based on phthalic anhydride, tetrachlorophthalic anhydride, trimellitic anhydride or triethylene-tetramine; (4) fumes arising from the use of rosin as a soldering flux; (5) proteolytic enzymes; (6) animals including insects and other arthropods used for the purposes of research or education or in laboratories; (7) dusts arising from the sowing, cultivation, harvesting, drying, handling, milling, transport or storage of barley, oats, rye, wheat or maize or the handling, milling, transport or storage of meal or flour made therefrom; (8) antibiotics; (9) cimetidine; (10) wood dust; (11) ispaghula; (12) castor bean dust; (13) ipecacuanha; (14) azodicarbonamide; (15) animals including insects and other arthropods (whether in their larval forms or not) used for the purposes of pest control or fruit cultivation or the larval forms of animals used for the purposes of research or education or in laboratories; (16) glutaraldehyde; (17) persulphate salts or henna; (18) crustaceans or fish or products arising from these in the food processing industry; (19) reactive dyes; (20) soya bean; (21) tea dust; (22) green coffee bean dust; (23) fumes from stainless steel welding; (24) any other sensitising agent, including in particular any chemical bearing the warning 'may cause sensitisation by inhalation': Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3 Pt I col 3 item 47.

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**407. Diseases additionally reportable in respect of offshore workplaces.**

The following diseases<sup>1</sup> are additionally reportable<sup>2</sup> in respect of offshore workplaces<sup>3</sup>: chickenpox; cholera; diphtheria; dysentery (whether amoebic or bacillary); acute encephalitis; erysipelas; food poisoning; legionellosis; malaria; measles; meningitis; meningococcal septicaemia (without meningitis); mumps; paratyphoid fever; plague; acute poliomyelitis; rabies; rubella; scarlet fever; tetanus; tuberculosis; typhoid fever; typhus; viral haemorrhagic fevers; and viral hepatitis<sup>4</sup>.

1 As to the meaning of 'disease' see PARA 405 note 4.

2 I.e. by virtue of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1)(b): see PARA 405.

3 As to the meaning of 'offshore workplace' see PARA 399 note 1.

4 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1), Sch 3 Pt II (items 48-72).



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#### **408. Notification of death following reportable injury.**

Subject to certain exceptions<sup>1</sup>, where an employee<sup>2</sup>, as a result of an accident<sup>3</sup> at work<sup>4</sup>, has suffered a reportable injury<sup>5</sup> which is a cause of his death within one year of the date of that accident, the employer must inform the relevant enforcing authority<sup>6</sup> in writing of the death as soon as it comes to his knowledge, whether or not the accident has been otherwise<sup>7</sup> reported<sup>8</sup>.

There are additional reporting requirements with regard to a death following a non-fatal accident in a mine or quarry<sup>9</sup>.

<sup>1</sup> Is subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 10: see PARA 399.

<sup>2</sup> As to the meaning of 'employee' see PARA 302 note 4.

<sup>3</sup> As to the meaning of 'accident' see PARA 399 note 2.

<sup>4</sup> As to the meaning of 'work' see PARA 302 note 1.

<sup>5</sup> Is an injury which is reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3: see PARA 399.

<sup>6</sup> As to the meaning of 'enforcing authority' see PARA 352 note 2.

<sup>7</sup> Is whether or not it has been reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3.

<sup>8</sup> Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 4.

<sup>9</sup> See the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 8, Sch 5 para 3; and PARA 409.

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**409. Additional provisions relating to mines and quarries and to offshore workplaces.**

Where at a mine<sup>1</sup> or a quarry<sup>2</sup> any person, as a result of an accident<sup>3</sup> arising out of or in connection with work<sup>4</sup>, dies or suffers any major injury<sup>5</sup>, or where there is a dangerous occurrence<sup>6</sup>, the responsible person<sup>7</sup> must:

- 276 (1) forthwith notify the nominated person<sup>8</sup> of that fact by the quickest practicable means; and
- 277 (2) within seven days send a report of it to the nominated person on a form approved<sup>9</sup> for the purposes of the relevant regulation<sup>10</sup>.

Where there is an accident or dangerous occurrence in relation to which the above provisions apply no person must disturb the place where it happened or tamper with anything at that place before:

- 278 (a) the expiration of three clear days after the relevant matter has been notified in accordance with the statutory requirements<sup>11</sup>; or
- 279 (b) the place has been visited by an inspector<sup>12</sup> and by workmen's inspectors exercising their statutory powers<sup>13</sup>,

whichever is the sooner<sup>14</sup>; but nothing in this provision prohibits the doing of anything by or with the consent of an inspector<sup>15</sup>. Furthermore, these requirements do not apply to an accident or to a dangerous occurrence if an appropriate person<sup>16</sup>:

- 280 (i) has taken adequate steps to ascertain that disturbing the site is unlikely to prejudice any investigation by an inspector into the circumstances of the accident or dangerous occurrence, and that it is necessary to secure the safety of any person at the mine or quarry or to avoid disrupting the normal working of it; and
- 281 (ii) has, subject to certain exceptions<sup>17</sup>, notified the nominated person, or any person designated in writing by the nominated person to receive any such notification, of the proposed disturbance, and gives such a person a reasonable opportunity to visit the site before it is disturbed; and
- 282 (iii) has taken adequate steps to ensure that there is obtained such information as will enable a full and accurate plan to be prepared forthwith, which plan must show the position of any equipment or other item relevant to the accident or dangerous occurrence immediately after it happened<sup>18</sup>; and
- 283 (iv) ensures that any equipment or other item relevant to the accident or dangerous occurrence is kept as it was immediately after the incident until an inspector agrees that it may be disposed of<sup>19</sup>.

Where there is a non-fatal injury to any person at a mine or quarry which is reported<sup>20</sup>, after which that person dies and his death is as a result of the accident, then as soon as it comes to his knowledge the responsible person must give notice of the death to the nominated person<sup>21</sup>.

The record of reportable injuries etc kept<sup>22</sup>, excluding any health record of an identifiable individual, must be available for inspection by the nominated person and workmen's inspectors exercising their statutory powers<sup>23</sup>.

In any case where any person, as a result of an accident arising out of or in connection with work at an offshore workplace<sup>24</sup>, dies or suffers a major injury, no person must disturb the place where it happened or tamper with anything at that place before:

- 284 (A) the expiration of three clear days after the matter has been notified in accordance with the relevant regulations<sup>25</sup>; or
- 285 (B) the place has been visited by an inspector,

whichever is the sooner<sup>26</sup>; but nothing in this provision prohibits the doing of anything by or with the consent of an inspector or the doing of anything necessary to secure the safety of the workplace or of any person, plant or vessel<sup>27</sup>.

1 As to the meaning of 'mine' see PARA 399 note 6.

2 As to the meaning of 'quarry' see PARA 399 note 6.

3 As to the meaning of 'accident' see PARA 399 note 2.

4 As to the meaning of 'work' see PARA 302 note 1.

5 As to the meaning of 'major injury' see PARA 399 note 4.

6 As to the meaning of 'dangerous occurrence' see PARA 400.

7 As to the meaning of 'responsible person' see PARA 399 note 6.

8 For these purposes, unless the context otherwise requires, 'nominated person' means the person (if any) who is for the time being nominated (1) in a case where there is an association or body representative of a majority of the total number of persons employed at a mine or quarry, by that association or body; (2) in any other case, jointly by associations or bodies which are together representative of such a majority, to receive on behalf of the persons so employed notices under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 8, Sch 5: Sch 5 para 1.

9 Ie approved for the purposes of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3: see PARA 399. As to the meaning of 'approved' see PARA 399 note 9.

10 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 2.

11 Ie notified in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163: see PARA 399 et seq.

12 As to the meaning of 'inspector' see PARA 375 note 2.

13 Ie exercising the powers conferred on them by the Mines and Quarries Act 1954 s 123 or, as the case may be, the Quarries Regulations 1999, SI 1999/2024, reg 40: see PARAS 383, 843.

14 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(1) (Sch 5 amended by SI 1999/2024). It is a defence in proceedings against any person for contravening the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(1) in any case which consists of the doing of any act, for that person to prove that the doing of that act was necessary for securing the safety of the mine or quarry or of any person: Sch 5 para 4(5). As to offences and penalties see generally PARA 852 et seq.

15 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(2).

16 For these purposes, unless the context otherwise requires, 'appropriate person' means (1) in the case of a coal mine, the responsible person or a person appointed in the management structure of that mine established

pursuant to the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(1) (see PARA 748); (2) in the case of any other mine, the responsible person; (3) in the case of a quarry, the responsible person, or a person appointed in the management structure of that quarry established pursuant to the Quarries Regulations 1999, SI 1999/2024, reg 8(1) (see PARA 839): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 1 (as amended: see note 14).

17    le except in the case of a non-fatal accident or a dangerous occurrence, where the nominated person or any person designated by that nominated person pursuant to head (ii) in the text cannot be contacted within a reasonable time: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(3)(b).

18    The person who has taken the steps referred to in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(3)(c) (see head (iii) in the text) must ensure that the plan referred to in that head is signed by the person who prepared it and bears the date on which it was prepared, and that a copy of that plan is supplied on request to any inspector or to the nominated person: Sch 5 para 4(4).

19    Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 4(3).

20    le reported in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 2.

21    Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 3.

22    le kept under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7: see PARA 411.

23    Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 para 5 (as amended: see note 14).

24    As to the meaning of 'offshore workplace' see PARA 399 note 1.

25    See note 11.

26    Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 9, Sch 6 para 1(1).

27    Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 6 para 1(2).

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#### 410. Reporting of gas incidents.

Whenever a conveyor of flammable gas through a fixed pipe distribution system, or a filler, importer or supplier (other than by means of retail trade) of a refillable container containing liquefied petroleum gas<sup>1</sup> receives notification of any death or any major injury<sup>2</sup> which has arisen out of or in connection with the gas distributed, filled, imported or supplied, as the case may be, by that person, he must forthwith notify the Health and Safety Executive<sup>3</sup> of the incident, and must within 14 days send a report of it to the Executive on a form approved<sup>4</sup> for these purposes<sup>5</sup>.

Whenever an employer or self-employed person<sup>6</sup> who is a member of an approved class of persons<sup>7</sup> has in his possession sufficient information for it to be reasonable for him to decide that a gas fitting<sup>8</sup> or any flue or ventilation used in connection with that fitting, by reason of its design, construction, manner of installation, modification or servicing, is or has been likely to cause death, or any major injury by reason of:

- 286 (1) accidental leakage of gas;
- 287 (2) inadequate combustion of gas; or
- 288 (3) inadequate removal of the products of combustion of gas,

he must within 14 days send a report of it to the Executive on a form approved for these purposes, unless he has previously reported such information<sup>9</sup>. Nothing, however, is reportable under these provisions if it is otherwise<sup>10</sup> notifiable or reportable<sup>11</sup>; and nothing is reportable<sup>12</sup> in relation to any gas fitting, flue or ventilation undergoing testing or examination at a place set aside for that purpose<sup>13</sup>.

1 For these purposes, 'liquefied petroleum gas' means commercial butane (that is, a hydrocarbon mixture consisting predominantly of butane, butylene or any mixture thereof) or commercial propane (that is, a hydrocarbon mixture consisting predominantly of propane, propylene or any mixture thereof) or any mixture of commercial butane and commercial propane: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(4).

2 As to the meaning of 'major injury' see PARA 399 note 4.

3 As to the Health and Safety Executive see PARA 361 et seq.

4 As to the meaning of 'approved' see PARA 399 note 9.

5 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(1). For the approved form for the reporting of a flammable gas incident see Form F2508G1. As to electronic reporting or reporting by telephone see PARA 399 note 11.

6 As to the meaning of 'self-employed person' see PARA 302 note 5.

7 Ie a member of a class of persons approved by the Executive for the purposes of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(3) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 913-914): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(2); Interpretation Act 1978 s 17(2).

8 Ie a gas fitting as defined in the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (ie meaning gas pipework, valves (other than emergency controls), regulators and meters, and fittings, apparatus

and appliances designed for use by consumers of gas for heating, lighting, cooking or other purposes for which gas can be used (other than the purpose of an industrial process carried out on industrial premises), but not meaning (1) any part of a service pipe; (2) any part of a distribution main or other pipe upstream of the service pipe; (3) a gas storage vessel; or (4) a gas cylinder or cartridge designed to be disposed of when empty: see reg 2(1); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 911): Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(2); Interpretation Act 1978 s 17(2).

9 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(2). For the approved form for the reporting of a dangerous gas fitting see Form F2508G2. As to electronic reporting or reporting by telephone see PARA 399 note 11.

10 Ie if it is notifiable or reportable elsewhere in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163.

11 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(3)(a).

12 Ie under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(2): see the text and notes 6-9.

13 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(3)(b).

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#### **411. Records.**

The responsible person<sup>1</sup> must keep a record of any event which is required to be reported<sup>2</sup>, which must contain the following particulars:

- 289 (1) the date and time of the accident<sup>3</sup> or dangerous occurrence<sup>4</sup>;
- 290 (2) in the event of an accident suffered by a person at work<sup>5</sup>, the following particulars of that person:
  - 63
  - 109. (a) full name;
  - 110. (b) occupation; and
  - 111. (c) nature of injury;
- 64
- 291 (3) in the event of an accident suffered by a person not at work, the following particulars of that person, unless they are not known and it is not reasonably practicable to ascertain them:
  - 65
  - 112. (a) full name;
  - 113. (b) status, such as, for example, 'passenger', 'customer', 'visitor' or 'bystander'; and
  - 114. (c) nature of injury;
- 66
- 292 (4) the place where the accident or dangerous occurrence happened;
- 293 (5) a brief description of the circumstances in which the accident or dangerous occurrence happened;
- 294 (6) the date on which the event was first reported to the relevant enforcing authority<sup>6</sup>; and
- 295 (7) the method by which the event was reported<sup>7</sup>.

In any case of disease<sup>8</sup> required to be reported<sup>9</sup>, the responsible person must keep a record which must contain the following particulars:

- 296 (i) the date of diagnosis of the disease;
- 297 (ii) the name of the person affected;
- 298 (iii) the occupation of the person affected;
- 299 (iv) the name or nature of the disease;
- 300 (v) the date on which the disease was first reported to the relevant enforcing authority; and
- 301 (vi) the method by which the disease was reported<sup>10</sup>.

The responsible person must also keep a record of such other particulars as may be approved<sup>11</sup> by the Health and Safety Executive<sup>12</sup> for the purpose of demonstrating that any approved means of reporting<sup>13</sup> has been complied with<sup>14</sup>.

The record referred to above must be kept either at the place where the work to which it relates is carried on or at the usual place of business of the responsible person and an entry in

such a record must be kept for at least three years from the date on which it was made<sup>15</sup>. The responsible person must send to the relevant enforcing authority such extracts from the record so required to be kept as that enforcing authority may from time to time require<sup>16</sup>.

- 1 As to the meaning of 'responsible person' see PARA 399 note 6.
- 2 Is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3: see PARA 399.
- 3 As to the meaning of 'accident' see PARA 399 note 2.
- 4 As to the meaning of 'dangerous occurrence' see PARA 400.
- 5 As to the meaning of 'work' see PARA 302 note 1.
- 6 As to the meaning of 'enforcing authority' see PARA 352 note 2.
- 7 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7(1)(a), Sch 4 Pt I (paras 1-7). Any record of deaths, injuries at work or disease which the responsible person keeps for any other purpose is, if it covers the injuries recordable under the 1995 regulations and includes the particulars specified in Sch 4, sufficient for the requirements of reg 7(1): reg 7(2).
- 8 As to the meaning of 'disease' see PARA 405 note 4.
- 9 Is under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5(1): see PARA 405.
- 10 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7(1)(b), Sch 4 Pt II (paras 1-6). See also reg 7(2), cited in note 7.
- 11 As to the meaning of 'approved' see PARA 399 note 9.
- 12 As to the Health and Safety Executive see PARA 361 et seq.
- 13 Is under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 3 or reg 5(1): see PARAS 399, 405.
- 14 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7(1)(c); and see note 7.
- 15 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7(3). Although not expressly provided for in reg 7, records may be retained electronically provided they can be readily retrieved and printed: see *Guide to the Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 1995* (L73) (HSE Books).
- 16 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7(4).



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### **3. SAFETY, HEALTH AND WELFARE; IN GENERAL**

#### **(1) GENERAL RESPONSIBILITIES FOR HEALTH AND SAFETY**

##### **(i) Negligence and Breach of Statutory Duty**

###### **412. Negligence; in general.**

At common law an employer owes to each of his employees a duty to take reasonable care for his safety in all the circumstances of the case<sup>1</sup>. The duty is often expressed as a duty to provide safe plant and premises, a safe system of work, safe and suitable equipment, and safe fellow-employees; but the duty is nonetheless one overall duty<sup>2</sup>. The duty is a personal duty and is non-delegable<sup>3</sup>. All the circumstances relevant to the particular employee must be taken into consideration, including any particular susceptibilities he may have<sup>4</sup>. Subject to the requirement of reasonableness, the duty extends to employees working away from the employer's premises<sup>5</sup>, which may include employees working abroad<sup>6</sup>.

Where an employee has been exposed to a known risk, such as inhalation of asbestos dust, over a period of time when he has worked for more than one employer, and it is impossible to establish that the subsequent illness or injury he suffers has been caused by a breach of duty by either employer or by both employers, and would not have happened but for that breach, the normal 'but for' test of causation in negligence<sup>7</sup> may be modified for public policy reasons<sup>8</sup>; a former employee's inability to identify which particular period of wrongful exposure brought about the onset of disease ought not, in all justice, to preclude recovery of compensation<sup>9</sup>. This applies equally where there have been periods of self-employment as well as periods of employment when exposure to asbestos dust has occurred<sup>10</sup>. Further, where not all the relevant employers are before the court, the employer against whom an award of damages is made is free to seek contribution against any other employer liable in respect of the same damage in the normal way<sup>11</sup>.

An employer may also be liable in negligence to an employee's spouse or other member of his family if that person has suffered secondary exposure to a harmful substance, for example to asbestos dust<sup>12</sup>.

The occupier of industrial premises owed the duties of an invitor or licensor to employees of third parties lawfully visiting those premises<sup>13</sup> and he now owes them the common duty of care under the Occupiers' Liability Act 1957<sup>14</sup>. To persons not upon the premises who may be affected by their operations the occupier and his employees owe the ordinary duty of care in negligence<sup>15</sup>.

An employer is vicariously responsible for the negligence of his employee in the course of his employment<sup>16</sup> and in certain circumstances he may incur responsibility by reason of the acts or omissions of his independent contractor<sup>17</sup>.

1 *Smith v Baker & Sons* [1891] AC 325, HL; *Wilsons and Clyde Coal Co Ltd v English* [1938] AC 57, [1937] 3 All ER 628, HL; *Paris v Stepney Borough Council* [1951] AC 367, [1951] 1 All ER 42, HL. The duty of care arises both in the tort of negligence and under terms normally implied into the contract of employment: see eg *Matthews v Kuwait Bechtel Corp* [1959] 2 QB 57, [1959] 2 All ER 345, CA; *Johnstone v Bloomsbury Health Authority* [1992] QB 333, [1991] 2 All ER 293, CA; and see further PARA 414 note 1; and **EMPLOYMENT** vol 39

(2009) PARA 33. See also the observations of Lord Rodger of Earlsferry in *Barber v Somerset County Council* [2004] UKHL 13 at [24]-[35], [2004] 2 All ER 385 at [24]-[35], [2004] 1 WLR 1089 at [24]-[35]. As to personal injury caused by defective equipment provided by an employer see PARA 413; and as to work-related stress see PARA 414. As to the employer's duty under the Health and Safety at Work etc Act 1974 see PARAS 420-423.

2 See eg *Bett v Dalmeny Oil Co* (1905) 7 F 787, Ct of Sess; *Wisons and Clyde Coal Co Ltd v English* [1938] AC 57, [1937] 3 All ER 628, HL; *Wilson v Tyneside Window Cleaning Co* [1958] 2 QB 110, [1958] 2 All ER 265, CA; cited with approval in *Cook v Square D Ltd* [1992] ICR 262, sub nom *Square D Ltd v Cook* [1992] IRLR 34, CA; *Devizes Reclamation Co Ltd v Chalk* (1999) Times, 2 April, CA (employer not liable for back injury suffered by experienced labourer acting on his own initiative, while performing a one-off task requiring the use of common sense); *Lovett v Arthur Andersen & Co* [2003] EWCA Civ 1946, [2003] All ER (D) 50 (Nov) (employer not liable for injury caused when employee, who had not been wearing her glasses, slipped and fell on a step she did not see). In this context, 'plant' includes material used in manufacture: *Knowles v Liverpool City Council* [1993] 4 All ER 321 at 324, [1993] 1 WLR 1428 at 1431, HL, per Lord Jauncey of Tullichettle. As to causation see also eg *Charles v Cardiff County Council* [2002] EWCA Civ 1753, [2002] All ER (D) 241 (Nov); *Parker v PFC Flooring Supplies Ltd* [2001] EWCA Civ 1533, [2001] All ER (D) 168 (Oct).

3 See eg *McDermid v Nash Dredging and Reclamation Co Ltd* [1987] AC 906, [1987] 2 All ER 878, HL; *Morris v Breaveglen Ltd (t/a Anzac Construction Co)* [1993] ICR 766, [1993] IRLR 350, CA.

4 See eg *Paris v Stepney Borough Council* [1951] AC 367, [1951] 1 All ER 42, HL. With regard to disabled workers, an employer now has a statutory duty to take reasonable steps to accommodate an employee's disability: see the Disability Discrimination Act 1995 s 4A; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 532; and see eg *Collins v Royal National Theatre Board* [2004] EWCA Civ 144, [2004] 2 All ER 851, [2004] IRLR 395.

5 See eg *Morris v Breaveglen Ltd (t/a Anzac Construction Co)* [1993] ICR 766, [1993] IRLR 350, CA (an employer who, under a labour only sub-contract, sends his employee to work on site under the direction and control of the main contractor, remains liable to his employee if the system of work is unsafe).

6 See eg *Cook v Square D Ltd* [1992] ICR 262, sub nom *Square D Ltd v Cook* [1992] IRLR 34, CA (employer in England sent employee to work as a consultant in Saudi Arabia; held on appeal that the employer had a duty to take all reasonable care to ensure the safety of his employee, taking into account all the circumstances, including the place where the work was done and the nature of the work, the employee's experience, the degree of control over him and his knowledge of the state of the premises. Although a home-based employer in certain circumstances might inspect a foreign site to ensure that the site was safe, the suggestion that a home-based employer had a responsibility for the daily events of a Saudi Arabian site was unreasonable); *Firth v Carib Holdings Ltd* [2003] EWHC 2112 (QB), [2003] All ER (D) 69 (Sep) (employee seconded to employment in hotel in Antigua; while residing in the hotel there, but not in the course of his employment, he was injured while diving into the sea; held that the home-based employer's duty was confined to taking reasonable care for the employee's safety in the course of his employment, and did not extend to a duty of care in respect of risks, even known risks of serious injury, in the locality of the employment which were outwith the course of his employment; it could not be said that employment extended to recreational use of the beach, still less diving into the sea); cf *Palfrey v ARC Offshore Ltd* [2001] All ER (D) 304 (Feb) (the minimum obligation upon an employer whose employees are being hired by a third party is to discover where they are being sent, how they are going to get there and the circumstances and conditions under which the work will be undertaken; an employer is also obliged to ascertain publicly available information in respect of any health hazards an employee could face and must, if any risks are revealed, draw them to the attention of his employees and advise them to take appropriate medical advice).

7 As to the general principles of causation in negligence see **DAMAGES** vol 12(1) (Reissue) PARA 854 et seq; **NEGLIGENCE** vol 78 (2010) PARAS 3-5.

8 See *Fairchild v Glenhaven Funeral Services Ltd, Fox v Spousal (Midlands) Ltd, Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305, explaining and applying *McGhee v National Coal Board* [1972] 3 All ER 1008, [1973] 1 WLR 1, HL. In *Fairchild v Glenhaven Funeral Services Ltd, Fox v Spousal (Midlands) Ltd, Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305 at [61] Lord Hoffmann proposed that five features are necessary for such a modification to be appropriate: (1) there is a duty specifically intended to protect employees against being unnecessarily exposed to the risk of, among other things, a particular disease; (2) the duty is one intended to create a civil right to compensation for injury relevantly connected with its breach; (3) it is established that the greater the exposure to the relevant substance (in that case, asbestos), the greater the risk of contracting that disease; (4) except in the case in which there has been only one significant exposure, medical science cannot prove which exposure is more likely than not to have produced the cell mutation which caused the disease; (5) the employee has contracted the disease against which he should have been protected.

9 *Fairchild v Glenhaven Funeral Services Ltd, Fox v Spousal (Midlands) Ltd, Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305.

10 *Barker v Saint Gobain Pipelines plc* [2004] EWCA Civ 545, [2005] 3 All ER 661, [2004] All ER (D) 43 (May), applying *Fairchild v Glenhaven Funeral Services Ltd*, *Fox v Spousal (Midlands) Ltd*, *Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305.

11 *Fairchild v Glenhaven Funeral Services Ltd*, *Fox v Spousal (Midlands) Ltd*, *Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305. Cf *Holtby v Brigham & Cowan (Hull) Ltd* [2000] 3 All ER 421, [2000] ICR 1086, CA (where it was held on appeal that the method of dividing responsibility on a time exposure basis was the correct approach for the court to adopt in the absence of some unusual feature, such as, eg, periods of exposure to the particularly dangerous blue asbestos); distinguished in *Woodland v Advocate General for Scotland* 2004 SC (D) 43/3, Ct of Sess (OH); *Knott v Newham Healthcare NHS Trust* [2003] EWCA Civ 771, [2003] All ER (D) 164 (May) (where there was a single event resulting in injury; no apportionment); and see *Barker v Saint Gobain Pipelines plc* [2004] EWCA Civ 545, [2005] 3 All ER 661, [2004] All ER (D) 43 (May) (the normal principle that there will be no apportionment where there has been an indivisible injury applies in mesothelioma cases). As to procedure with regard to mesothelioma claims, see *Practice Direction (Employers' Liability Policy Trigger Issues: transfer of existing and new claims to the central registry of the Queen's Bench Division and selection and assignment of lead cases)* [2007] All ER (D) 453 (Jul).

12 See eg *Maguire v Harland and Wolff plc* [2005] EWCA Civ 01, [2005] PIQR P308 (risk of secondary exposure not appreciated at the time so harm not reasonably foreseeable). As to liability where a person has negligently or in breach of statutory duty caused or permitted another person to be exposed to asbestos see now the Compensation Act 2006 s 3; and PARA 640.

13 As to the common law duty of care see **NEGLIGENCE**.

14 See the Occupiers' Liability Act 1957 s 2; and **NEGLIGENCE** vol 78 (2010) PARA 32 et seq.

15 See *M'Alister (or Donoghue) v Stevenson* [1932] AC 562, HL; *AC Billings & Sons Ltd v Riden* [1958] AC 240, [1957] 3 All ER 1, HL (visitor to premises injured by negligence of building contractors); and **NEGLIGENCE**. As to the common law duty owed to trespassers see eg *British Railways Board v Herrington* [1972] AC 877, [1972] 1 All ER 749, HL; *Pannett v P McGuinness & Co Ltd* [1972] 2 QB 599, [1972] 3 All ER 137, CA; *Southern Portland Cement Ltd v Cooper* [1974] AC 623, [1974] 1 All ER 87, PC; and **NEGLIGENCE** vol 78 (2010) PARA 40. But see *Ferguson v Welsh* [1987] 3 All ER 777, [1987] 1 WLR 1553, HL.

16 See eg *Staveley Iron and Chemical Co Ltd v Jones* [1956] AC 627, [1956] 1 All ER 403, HL; *Smith v Stages* [1989] AC 928, [1989] 1 All ER 833, HL; *Aldred v Nacanco* [1987] IRLR 292, CA; *Lister v Hesley Hall Ltd* [2001] UKHL 22, [2002] 1 AC 215, [2001] 2 All ER 769 (not a health and safety case); *Mattis v Pollock (t/a Flamingos Nightclub)* [2003] EWCA Civ 887, [2003] 1 WLR 2158, [2003] ICR 1335; and **NEGLIGENCE** vol 78 (2010) PARAS 16, 18, 66. See also *Viasystems (Tyneside) v Thermal Transfer (Northern) Ltd* [2005] EWCA Civ 1151, [2006] QB 510, [2005] 4 All ER 1181 (more than one party may be vicariously liable for the negligent act of one employee).

17 This responsibility may arise at common law (eg in the case of wrongful withdrawal of support: see *Dalton v Angus & Co* (1881) 6 App Cas 740, HL) or where the employer is under an absolute statutory duty to prevent the harm complained of (see *Groves v Lord Wimborne* [1898] 2 QB 402, CA). As to liability for independent contractors under the Occupiers' Liability Act 1957 s 2(4) see further **NEGLIGENCE** vol 78 (2010) PARA 35. See also *Viasystems (Tyneside) v Thermal Transfer (Northern) Ltd* [2005] EWCA Civ 1151, [2006] QB 510, [2005] 4 All ER 1181 (sub-contractor and sub-sub-contractor may both be vicariously liable for the negligent act of one employee).

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#### 413. Provision of defective equipment by employer.

The Employers' Liability (Defective Equipment) Act 1969 provides that where an employee<sup>1</sup> suffers personal injury<sup>2</sup> in the course of his employment in consequence of a defect in equipment<sup>3</sup> provided by his employer<sup>4</sup> for the purposes of the employer's business<sup>5</sup>, and the defect is wholly or partly attributable to the fault<sup>6</sup> of a third party<sup>7</sup>, the injury is deemed also to be attributable to negligence on the part of the employer, irrespective of whether the employer would otherwise be liable in respect of the injury<sup>8</sup>. An agreement is void to the extent that it purports to exclude or limit the liability of the employer under this provision<sup>9</sup>.

1 'Employee' means a person employed by another person under a contract of service or apprenticeship, for the purposes of a business (see note 5) carried on by the latter person; and 'employer' must be construed accordingly: Employers' Liability (Defective Equipment) Act 1969 s 1(3).

2 'Personal injury' includes loss of life, any impairment of a person's physical or mental condition and any disease: Employers' Liability (Defective Equipment) Act 1969 s 1(3).

3 'Equipment' includes any plant and machinery, vehicle, aircraft and clothing: Employers' Liability (Defective Equipment) Act 1969 s 1(3). 'Equipment', for the purposes of s 1, is to be widely construed so as to embrace every article of whatever kind furnished by an employer for the purposes of his business: *Coltman v Bibby Tankers Ltd, The Derbyshire* [1988] AC 276 at 299, [1987] 3 All ER 1068 at 1073, HL, per Lord Oliver of Aylmerton. It thus embraces articles as diffuse in size and nature as a ship (*Coltman v Bibby Tankers Ltd, The Derbyshire* [1988] AC 276, [1987] 3 All ER 1068, HL), cleaning materials (*Ralston v Greater Glasgow Health Board* 1987 SLT 386, Ct of Sess), flagstones being laid by workmen (*Knowles v Liverpool City Council* [1993] 4 All ER 321, [1993] 1 WLR 1428, HL), and a door closer under repair (*Spencer-Franks v Kellogg Brown and Root Ltd* [2008] UKHL 46, [2009] 1 All ER 269).

4 As to the meaning of 'employer' see note 1. The provisions of the Employers' Liability (Defective Equipment) Act 1969 s 1 bind the Crown, and persons in the service of the Crown are treated as employees of the Crown for this purpose if they would not otherwise be so treated: s 1(4).

5 'Business' includes the activities carried on by any public body: Employers' Liability (Defective Equipment) Act 1969 s 1(3).

6 'Fault' means negligence, breach of statutory duty or other act or omission which gives rise to liability in tort in England and Wales or which is wrongful and gives rise to liability in damages in Scotland: Employers' Liability (Defective Equipment) Act 1969 s 1(3).

7 It is immaterial whether the third party is identified or not: Employers' Liability (Defective Equipment) Act 1969 s 1(1).

8 Employers' Liability (Defective Equipment) Act 1969 s 1(1). This is without prejudice to the law relating to contributory negligence and to any remedy by way of contribution in contract or otherwise which is available to the employer: s 1(1).

9 Employers' Liability (Defective Equipment) Act 1969 s 1(2).

Breach by an employer of health and safety regulations regarding the provision of equipment (see eg the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306; and PARA 482 et seq) may also give rise to civil or criminal liability under the Health and Safety at Work etc Act 1974: see s 47(2); and PARA 416.

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#### **414. Work-related stress.**

An employer's duty of care to his employee<sup>1</sup> extends to the employee's psychiatric well-being. Thus where an employee suffered from a stress-induced mental illness as a result of pressure of work, and the employer failed to relieve that pressure when the employee returned to work, the employer was held in breach of the duty of care when the employee suffered from a recurrence of the illness<sup>2</sup>.

In 2002 the Court of Appeal, hearing four cases together in order to provide guidance as to the principles to be applied to claims relating to stress at work, concluded that there were no special control mechanisms applying to claims for psychiatric, or physical, illness or injury arising from the stress of doing the work that the employee was required to do. The threshold question was whether the particular kind of harm (an injury to health, as distinct from occupational stress), which was attributable to stress at work, as distinct from other factors, to the particular employee was reasonably foreseeable; and foreseeability depended upon what the employer knew or ought reasonably to have known about the individual employee<sup>3</sup>. Because of the nature of mental disorder, it was harder to foresee than physical injury, but might be easier to foresee in a known individual than in the population at large. An employer was, the Court held, usually entitled to assume that the employee could withstand the normal pressures of his job unless the employer knew of some particular problem or vulnerability. The test was the same whatever the employment and there were no occupations which should be regarded as intrinsically dangerous to mental health<sup>4</sup>. The assessment of damages would, moreover, take account of any pre-existing disorder or vulnerability and of the chance that the claimant would have succumbed to a stress-related disorder in any event<sup>5</sup>. The court further suggested that an employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty<sup>6</sup>.

Two years later, when one of the relevant cases came before it on a further appeal, the House of Lords approved the principles set out above as useful practical guidance, but reversed the Court of Appeal's decision on consideration of the facts<sup>7</sup>, and preferred, by a majority, the general statement of principle in an earlier case involving physical rather than mental illness<sup>8</sup>. Thus the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know. Where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, the employer is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent<sup>9</sup>.

The Health and Safety Executive has issued guidance on work-related stress<sup>10</sup>.

<sup>1</sup> See PARA 412. There is also an implied contractual duty of care as to health and safety: see eg *Marshall Specialist Vehicles Ltd v Osborne* [2003] IRLR 672, [2003] All ER (D) 202 (Sep), EAT; *Thanet District Council v*

*Websper* [2003] All ER (D) 246 (Jan), EAT. In *Barber v Somerset County Council* [2004] UKHL 13 at [24]-[35], [2004] 2 All ER 385 at [24]-[35], [2004] 1 WLR 1089 at [24]-[35], Lord Rodger of Earlsferry discussed the tension between the duty of care in tort and the provisions of the contract of employment. See further **EMPLOYMENT** vol 39 (2009) PARA 32 et seq.

2 *Walker v Northumberland County Council* [1995] 1 All ER 737, [1995] ICR 702. As to reasonable foreseeability that an employee placed in a stressful situation will suffer either physical or psychiatric injury as a result see eg *Donachie v Greater Manchester Police Chief Constable* [2004] EWCA Civ 405, 148 Sol Jo LB 509, [2004] All ER (D) 126 (Apr).

3 Factors likely to be relevant in answering the threshold question include the nature and extent of the work done by the employee, and signs from the employee of impending harm to health. The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think the contrary. He does not generally have to make searching inquiries of the employee or seek permission to make further inquiries of his medical advisers. To trigger a duty to take steps, the indications of impending harm to health arising from stress at work have to be plain enough for any reasonable employer to realise that he should do something about it. The employer will only be in breach of duty if he has failed to take the steps which were reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which might occur, the costs and practicability of preventing it and the justifications for running the risk. The size and scope of the employer's operation, its resources, and the demands it faces are relevant in deciding what was reasonable: those include the interests of other employees and the need to treat them fairly, eg, in any redistribution of duties. An employer can only reasonably be expected to take steps which are likely to do some good, and the court is likely to need expert evidence on that. If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job. In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care. The claimant has to show that the breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm. Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment: see *Hatton v Sutherland*, *Barber v Somerset County Council*, *Jones v Sandwell Metropolitan Borough Council*, *Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76 at [26]-[29], [31]-[36], [39], [42], [2002] 2 All ER 1 at [26]-[29], [31]-[36], [39], [42], [2002] ICR 613 at [26]-[29], [31]-[36], [39], [42] (revsd without affecting this practical guidance sub nom *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089). See also *Dickins v O<sub>2</sub> plc* [2008] EWCA Civ 1144, [2009] IRLR 58, [2008] All ER (D) 154 (Oct). An employer is entitled to take an employee's statements about the employee's mental health and ability to cope at face value: *Vahidi v Fairstead House School Trust Ltd* [2005] EWCA Civ 765, [2005] ELR 607 (employee returned gradually to work after breakdown, and employer held three support meetings; no breach of duty). See also *Daw v Intel Corp'n (UK) Ltd* [2007] EWCA Civ 70, [2007] 2 All ER 126, [2007] ICR 1318.

4 *Hatton v Sutherland*, *Barber v Somerset County Council*, *Jones v Sandwell Metropolitan Borough Council*, *Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76 at [20], [22]-[25], [29], [43], [2002] 2 All ER 1 at [20], [22]-[25], [29], [43], [2002] ICR 613 at [20], [22]-[25], [29], [43] (revsd without affecting this practical guidance sub nom *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089).

5 *Hatton v Sutherland*, *Barber v Somerset County Council*, *Jones v Sandwell Metropolitan Borough Council*, *Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76 at [43], [2002] 2 All ER 1 at [17], [2002] ICR 613 at [17] (revsd without affecting this practical guidance sub nom *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089).

6 *Hatton v Sutherland*, *Barber v Somerset County Council*, *Jones v Sandwell Metropolitan Borough Council*, *Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76 at [17], [2002] 2 All ER 1, [2002] ICR 613 (revsd without affecting this practical guidance sub nom *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089).

7 See *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089.

8 See *Barber v Somerset County Council* [2004] UKHL 13 at [1], [2], [65], [2004] 2 All ER 385 at [1], [2], [65], [2004] 1 WLR 1089 at [1], [2], [65], approving dicta of Swanwick J in *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776 at 1783.

9 See note 8.

10 At the date at which this title states the law, the relevant guidance was accessible on the Executive's internet site at [www.hse.gov.uk](http://www.hse.gov.uk). As to the status of such guidance see PARA 371.

## UPDATE

#### **414 Work-related stress**

NOTE 3--See *Veakins v Kier Islington Ltd* [2009] EWCA Civ 1288, [2010] IRLR 132.

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#### 415. Scope of regulations.

The imposition of a statutory duty does not of itself absolve the employer from liability in negligence at common law in relation to the same matter, so that by his conduct he may be in breach both of his common law duty and his statutory duty<sup>1</sup>. Where, however, there are no safety precautions prescribed by regulations which are applicable in the circumstances of the case, the question of negligence at common law should be approached without regard to any regulations which might have been applicable had the circumstances of the case been slightly different<sup>2</sup>.

If regulations prescribing safety precautions apply and are complied with, it may be impossible to maintain that there has been negligence, but the requirements of regulations may, by drawing attention to a danger, result in an employer's being under a duty at common law not to expose an employee to unnecessary risk from that danger<sup>3</sup>. A regulation does not necessarily narrow the scope of an employer's common law duty<sup>4</sup>. If an employer knows of a risk and has reason to foresee injury to his employees as a result of it and fails to take reasonable care for their safety, he will be liable in negligence even though there is no breach of statutory duty<sup>5</sup>. It is a matter of fact in each case whether an employer is fixed with constructive knowledge of a risk, and owes a duty extending beyond any relevant regulations, so as to trigger a common law duty of care to employees<sup>6</sup>.

1 *Franklin v Gramophone Co Ltd* [1948] 1 KB 542, [1948] 1 All ER 353, CA; *National Coal Board v England* [1954] AC 403, [1954] 1 All ER 546, HL.

2 See *Chipchase v British Titan Products Co Ltd* [1956] 1 QB 545, [1956] 1 All ER 613, CA (painter working below the height at which the safety regulation then in force applied; held that it was right to approach the question of negligence at common law independently of the regulation, as it did not, on the facts, apply).

3 See *Franklin v Gramophone Co Ltd* [1948] 1 KB 542, [1948] 1 All ER 353, CA.

4 See eg *Bux v Slough Metals Ltd* [1974] 1 All ER 262, [1973] 1 WLR 1358, CA.

5 See eg *Kilgollan v William Cooke & Co Ltd* [1956] 2 All ER 294, [1956] 1 WLR 527, CA.

6 As to knowledge of risk see eg *Stokes v Guest Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776, 5 KIR 401; *Fairchild v Glenhaven Funeral Services Ltd*, *Fox v Spousal (Midlands) Ltd*, *Matthews v Associated Portland Cement Manufacturers (1978) Ltd* [2002] UKHL 22 at [6]-[7], [2003] 1 AC 32 at [6]-[7], [2002] 3 All ER 305 at [6]-[7], per Lord Bingham of Cornhill (date of knowledge of dangers from exposure to asbestos dust and fibres); *Doherty v Rugby Joinery Ltd* [2004] EWCA Civ 147, [2004] ICR 1272 (where the history of the development of knowledge about 'vibration white finger' is reviewed; the court agreed with the trial judge that it was not until 1991, a year after the publication of a handbook for employers recommending that use of a sander should be restricted to a short period each day, that the duty in that case arose); distinguished in *R v HTM Ltd* [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383. See also *Bowman v Harland and Wolff plc* [1992] IRLR 349 (a Northern Ireland case fixing date of knowledge for the general existence of 'vibration white finger'); *Dugmore v Swansea NHS Trust* [2002] EWCA Civ 1689, [2003] 1 All ER 333, [2003] ICR 574 (date of knowledge of risk posed by latex sensitisation).

As to the extent of a duty see eg *Budden v BP Oil* (1980) 124 Sol Jo 376, [1980] JPL 586, CA.



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#### **416. Breach of statutory duty.**

The Factories Act 1961 imposes penalties for the infringement of its provisions<sup>1</sup>, but it does not expressly confer a right of action for damages in respect of injury sustained by a workman in an accident due to breach of statutory duty by the occupier or owner of the factory<sup>2</sup>. The civil right of action for breach of statutory duty<sup>3</sup> arises if it is shown (1) that there has been a breach of statutory duty<sup>4</sup> towards the claimant, he being among the class of persons whom the statute is intended to protect<sup>5</sup>; and (2) that the damage or injury was caused or was materially contributed to by the breach<sup>6</sup>. It is not necessary to show that the injury was suffered in the course of employment<sup>7</sup>, or even that the employee was lawfully upon that part of the factory premises where he suffered injury, provided that he was employed to work in the premises generally<sup>8</sup>.

The onus of proof both of breach of statutory duty and of causation of damage or injury is on the claimant<sup>9</sup>. It has been held that whether sufficient causal connection of the damage or injury with the breach of statutory duty is proved should be determined by applying common sense to the facts of the case rather than by the theories of logicians<sup>10</sup>. The onus of proving that the injury was caused by the breach of duty is not necessarily shifted from a claimant employee merely by the facts that there has been a breach of a safety enactment and that the employee has been injured in a way that could have resulted from the breach<sup>11</sup>.

It is expressly provided that a breach of a duty imposed by health and safety regulations<sup>12</sup> under the Health and Safety at Work etc Act 1974 is, so far as it causes damage<sup>13</sup>, actionable except in so far as the regulations provide otherwise<sup>14</sup>. Breach of a general duty under that Act<sup>15</sup> is not, however, actionable except in so far as it would be so apart from the provisions of the 1974 Act<sup>16</sup>.

Breach of a duty imposed on an employer by the Management of Health and Safety at Work Regulations 1999<sup>17</sup> does not confer a right of action in any civil proceedings in so far as that duty applies for the protection of a third party<sup>18</sup>. Breach of a duty imposed on an employee by those regulations<sup>19</sup> does not confer a right of action in any civil proceedings in so far as that duty applies for the protection of a third party<sup>20</sup>.

1 As to offences see the Factories Act 1961 Pt XII (ss 155-171); and PARA 862 et seq.

2 As to the meaning of 'factory' see PARA 318 et seq. As to the meaning of 'owner' see PARA 322 note 2; and as to the occupier of a factory see PARA 862 text to notes 5-6. It is material to note, particularly in relation to analogous decisions under the Coal Mines Act 1911 (repealed) and the Mines and Quarries Act 1954 (see PARA 748 et seq), that the Factories Act 1961 contains no general provision that it is a defence to prove either (1) that it was not reasonably practicable to avoid or prevent the breach (see the Coal Mines Act 1911 s 102(8) (repealed)); or (2) that it was impracticable to avoid or to prevent it (see the Mines and Quarries Act 1954 s 157). See further PARA 878.

3 This right of action is distinct from negligence, although it is a common law right: see *London Passenger Transport Board v Upson* [1949] AC 155 at 168, [1949] 1 All ER 60 at 67, HL, per Lord Wright; and for a general discussion see *Solomons v R Gertzenstein Ltd* [1954] 2 QB 243, [1954] 2 All ER 625, CA. For a recent case in the context of safety regulations having effect under the Merchant Shipping Act 1995 see *Ziemniak v ETPM Deep Sea Ltd* [2003] EWCA Civ 636, [2003] 2 All ER (Comm) 283.

4 A breach of a health provision of the Factories Act 1961 usually gave rise to an action: see eg *Nicholson v Atlas Steel Foundry and Engineering Co Ltd* [1957] 1 All ER 776, [1957] 1 WLR 613, HL (based upon the

Factories Act 1937 s 4(1) (repealed) (ventilation), but in which, however, the point was not discussed); *Lane v Gloucester Engineering Co Ltd* [1967] 2 All ER 293, [1967] 1 WLR 767, CA; and *Thornton v Fisher and Ludlow Ltd* [1968] 2 All ER 241, [1968] 1 WLR 655, CA (based upon the Factories Act 1961 s 5(1) (repealed) (lighting); and also *Carroll v North British Locomotive Co Ltd* 1957 SLT (Sh Ct) 2 (based upon the Factories Act 1937 s 1(b) (repealed) (cleanliness of floors)). A breach of a welfare provision of the Factories Act 1961 might give rise to an action if it impinged on health or safety: *Reid v Westfield Paper Co Ltd* 1957 SC 218 at 225 obiter per Lord Clyde LP. Plaintiffs recovered for breach of a welfare provision in *McCarthy v Daily Mirror Newspapers Ltd* [1949] 1 All ER 801, CA (which was based upon the Factories Act 1937 s 43(1) (repealed) (accommodation for clothing), but where the point was not discussed); and in *Barr v Cruickshank & Co Ltd* 1959 SLT (Sh Ct) 9 (also based upon the Factories Act 1937 s 43(1) (repealed)). As to the replacement of the health and welfare provisions of the Factories Act 1961 with regulations made under the Health and Safety at Work etc Act 1974 see PARA 424 note 3. As to the replacement under the Civil Procedure Rules ('CPR') of the terms 'plaintiff' and 'action' with the terms 'claimant' and 'claim' see **CIVIL PROCEDURE** vol 11 (2009) PARA 18.

5 In construing a statute to determine whether a civil right of action lies under it this is an essential element; but it was held to be well settled that the factory legislation was intended for the protection and benefit of workmen so as to confer a right of action for breach of statutory duty: see *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 408-409, [1949] 1 All ER 544 at 548-549, HL, per Lord Simonds, citing *Groves v Lord Wimborne* [1898] 2 QB 402 at 406, CA.

6 *Bonnington Castings Ltd v Wardlaw* [1956] AC 613, [1956] 1 All ER 615, HL; *Cummings (or McWilliams) v Sir William Arrol & Co Ltd* [1962] 1 All ER 623, [1962] 1 WLR 295, HL; *Wigley v British Vinegars Ltd* [1964] AC 307, [1962] 3 All ER 161, HL; *McGhee v National Coal Board* [1972] 3 All ER 1008, [1973] 1 WLR 1, HL.

7 *Allen v Aeroplane and Motor Aluminium Castings Ltd* [1965] 3 All ER 377, [1965] 1 WLR 1244, CA; *Uddin v Associated Portland Cement Manufacturers Ltd* [1965] 2 QB 582, [1965] 2 All ER 213, CA; *Westwood v Post Office* [1974] AC 1, [1973] 3 All ER 184, HL.

8 *Westwood v Post Office* [1974] AC 1, [1973] 3 All ER 184, HL, which was decided upon the Offices, Shops and Railway Premises Act 1963 s 16 (repealed).

9 See the cases cited in note 6. The claimant does not have to prove that the breach was the sole cause of his injury; it is sufficient if it materially contributed to it, a material contribution being one that cannot be dismissed as de minimis: *Bonnington Castings Ltd v Wardlaw* [1956] AC 613, [1956] 1 All ER 615, HL; *Nicholson v Atlas Steel Foundry and Engineering Co Ltd* [1957] 1 All ER 776, [1957] 1 WLR 613, HL. For practical purposes a finding that the breach materially increased the risk of injury amounts to a finding that the breach materially contributed to it, at least in the absence of positive proof to the contrary: *McGhee v National Coal Board* [1972] 3 All ER 1008, [1973] 1 WLR 1, HL.

10 *Stapley v Gypsum Mines Ltd* [1953] AC 663, [1953] 2 All ER 478, HL, per Lord Reid; *McGovern v British Steel Corp* [1986] ICR 608, [1986] IRLR 411, CA; cf *Dawson v Murex Ltd* [1942] 1 All ER 483, CA. As to causation of damage see **DAMAGES**.

11 *Bonnington Castings Ltd v Wardlaw* [1956] AC 613, [1956] 1 All ER 615, HL. Where a workman who has not previously suffered from a disease contracts it after being subjected to conditions likely to cause it and he shows that it started in a way typical of disease caused by such conditions, he establishes prima facie that the disease was caused by those conditions: *Gardiner v Motherwell Machinery and Scrap Co Ltd* [1961] 3 All ER 831n, [1961] 1 WLR 1424, HL.

12 As to health and safety regulations see PARAS 415, 424-425. The Health and Safety at Work etc Act 1974 s 47(2) cannot be relied on in relation to a breach of regulations which are not expressly made under s 15(1) (see PARA 349): *Polestar Jowetts Ltd v Komori UK Ltd*, *Vibixa Ltd v Komori UK Ltd* [2006] EWCA Civ 536, [2006] 4 All ER 294, [2006] 1 WLR 2472.

13 'Damage' includes the death of or injury to any person, including any disease and any impairment of a person's physical or mental condition: Health and Safety at Work etc Act 1974 s 47(6). There do not have to be symptoms of the disease or injury: *Church v Ministry of Defence* (1984) 134 NLJ 623; *Sykes v Ministry of Defence* (1984) Times, 23 March. See also *Rothwell v Chemical & Insulating Co Ltd*, *Re Pleural Plaques Litigation* [2007] UKHL 39, [2007] 4 All ER 1047, [2007] 3 WLR 876.

14 Health and Safety at Work etc Act 1974 s 47(2) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 14, Sch 18). This does not prejudice any right of action which exists apart from the provisions of the Health and Safety at Work etc Act 1974: s 47(4). Any term of an agreement which purports to exclude or restrict the operation of s 47(2), or any liability arising by virtue of it, is void except in so far as health and safety regulations provide otherwise: s 47(5) (as so amended). Nothing in Pt I (ss 1-54) affects the extent, if any, to which breach of duty imposed by any of the relevant statutory provisions (as to which see PARA 302 note 24) is actionable: s 47(1)(b). Non-observance of a code of practice approved and issued under s 16 (see PARA 426) does not of itself give rise to civil liability: see PARA 427. As to the use of approved codes of

practice in criminal proceedings see s 17; and PARA 427; and as to criminal proceedings generally see PARA 852 et seq.

For examples of claims for breach of statutory duty brought in respect of a breach of health and safety regulations see *Dugmore v Swansea NHS Trust* [2002] EWCA Civ 1689, [2003] 1 All ER 333, [2003] ICR 574 (breach of duty to ensure that exposure to hazardous substances was prevented or controlled under what is now the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7: see PARA 622); *O'Neill v DSG Retail Ltd* [2002] EWCA Civ 1139, [2003] ICR 222, [2002] All ER (D) 500 (Jul) (breach of duty to give manual handling training under the Manual Handling Operations Regulations 1992, SI 1992/ SI 1992/2793, reg 4(1)(b)(ii): see PARA 583); *Horton v Taplin Contracts Ltd* [2002] EWCA Civ 1604, [2003] ICR 179, [2002] All ER (D) 122 (Nov) (alleged breach of duty to provide suitable and stable work equipment and safe place of work under what are now the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see PARA 482 et seq); *Fytche v Wincanton Logistics plc* [2003] EWCA Civ 874, [2003] ICR 1582, [2003] All ER (D) 334 (Jun) (alleged breach of duty to ensure that any personal protective equipment provided to an employee is maintained in an efficient state, in efficient working order and in good repair under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 7: see PARA 526). See also *Wilson v Maersk Co Ltd* [2004] EWCA Civ 313, [2004] All ER (D) 479 (Mar).

15     Ie a duty under the Health and Safety at Work etc Act 1974 ss 2-7 or any contravention of s 8: see PARA 420 et seq.

16     See the Health and Safety at Work etc Act 1974 s 47(1)(a); and PARA 420.

17     Ie the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 429 et seq.

18     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22(1) (reg 22 substituted by SI 2006/438). For these purposes, 'third party', in relation to the undertaking, means any person who may be affected by that undertaking other than the employer whose undertaking it is and persons in his employment: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22(3) (as so substituted).

19     Ie under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 14: see PARA 447.

20     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22(2) (as substituted: see note 18).

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#### **417. Qualified statutory obligations.**

Obligations imposed by safety legislation are frequently qualified by the words 'so far as reasonably practicable'<sup>1</sup>, or 'so far as practicable'<sup>2</sup>. Each of these phrases affects in a different manner the obligation which it qualifies.

'Reasonably practicable' is a narrower term than 'physically possible' and implies that a computation must be made, before the breach complained of, in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other and that, if it be shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person upon whom the obligation is imposed discharges the onus which is upon him<sup>3</sup>. The unforeseeability of a risk may be relevant in deciding what is reasonably practicable<sup>4</sup>.

Where the statutory obligation is qualified solely by the word 'practicable' a stricter standard is imposed, although the connotation of the term is not easy to determine<sup>5</sup>. Measures may be practicable which are not reasonably practicable<sup>6</sup> but, nonetheless, 'practicable' means something other than physically possible. The measures must be possible in the light of current knowledge and invention<sup>7</sup>; thus it is impracticable to take precautions against a danger which cannot be known to be in existence, or to take precautions which have not yet been invented, so that the concept of practicability introduces at all events some degree of reason and involves at all events some regard for practice<sup>8</sup>. If a precaution can be taken without practical difficulty, then it is a practicable precaution, notwithstanding that it may occasion some risks to those who take it and even though the risk far outweighs the benefit to be achieved<sup>9</sup>.

In civil proceedings the onus of proving that compliance with a statutory obligation is not reasonably practicable or not practicable, as the case may be, lies upon the person upon whom the obligation is placed<sup>10</sup> and such a defence must be specifically pleaded<sup>11</sup>. In criminal proceedings the onus lies upon the accused<sup>12</sup>.

1 See eg the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(2); and PARA 456 note 13.

2 See eg the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 8(2); and PARA 463.

3 *Edwards v National Coal Board* [1949] 1 KB 704 at 712, [1949] 1 All ER 743 at 747, CA, per Asquith LJ (decided upon the Coal Mines Act 1911 s 102(8) (repealed)); *McCarthy v Coldair Ltd* [1951] 2 TLR 1226, CA; *Marshall v Gotham Co Ltd* [1954] AC 360 at 373, [1954] 1 All ER 937, HL. The fact that an employee has carried out work in a negligent manner, with the result that a third party is exposed to a health risk, does not preclude an employer from arguing a reasonably practicable defence: *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, CA. The Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21 (see PARA 859) may, however, now prevent or at least further narrow the scope which an employer has for arguing the reasonably practicable defence when there has been an isolated act or omission of an employee. See also *R (on the application of Pullen) v Health and Safety Executive* [2003] EWHC 2934 (Admin), [2003] All ER (D) 174 (Dec) (system for maintenance of the common areas of a block of flats owned by a housing association; not reasonably practicable to prevent acts of vandalism by persons over whom the association had no control). What is reasonably practicable may depend on the nature and scale of the employer or other duty holder: see eg *R v Associated Octel Co Ltd* [1996] 4 All ER 846, [1996] 1 WLR 1543, HL.

4 See *R v HTM Ltd* [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383.

5 *Cartwright v GKN Sankey Ltd* (1973) 14 KIR 349, CA.

6 *Marshall v Gotham Ltd* [1954] AC 360, [1954] 1 All ER 937, HL, per Lord Reid.

7 *Adsett v K & L Steelfounders and Engineers Ltd* [1953] 1 All ER 97n, [1953] 1 WLR 137; affd [1953] 2 All ER 320, [1953] 1 WLR 773, CA. See also *Moorcroft v Thomas Powles & Sons Ltd* [1962] 3 All ER 741, [1962] 1 WLR 1447, DC.

8 *Jayne v National Coal Board* [1963] 2 All ER 220 (decided upon the Mines and Quarries Act 1954 s 157). An employer is not in breach of a duty of care in failing to take precautions against an unknown danger: see *Heyes v Pilkington Glass Ltd* [1998] PIQR P303, CA.

9 *Boyton v Willment Bros Ltd* [1971] 3 All ER 624, [1971] 1 WLR 1625, CA.

10 *Nimmo v Alexander Cowan & Sons Ltd* [1968] AC 107, [1967] 3 All ER 187, HL (applied in *Bilton v Fastnet Highlands Ltd* 1998 SLT 1323, OH). The required matters must be proved on a balance of probabilities.

11 *Bowes v Sedgefield District Council* [1981] ICR 234, CA; *Larner v British Steel plc* [1993] 4 All ER 102, [1993] ICR 551, CA.

12 See the Health and Safety at Work etc Act 1974 s 40; and PARA 858. The onus of proof which is placed on a defendant to establish that he did all that was reasonably practicable in the circumstances does not interfere with the presumption of innocence principle: *Davies v Health and Safety Executive* [2002] EWCA Crim 2949, [2003] IRLR 170, [2002] All ER (D) 275 (Dec). The burden thus laid upon the accused may be discharged by proof of the required matters merely on a balance of probabilities: *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA; *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA.

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#### 418. Employer's defences.

Where an employee's injury is caused solely by his own fault he will not succeed in a claim against his employer<sup>1</sup>; where it is caused partly by his fault<sup>2</sup> and partly by the employer's negligence or breach of statutory duty (or the negligence of, or breach of statutory duty by, someone in respect of whom the employer is vicariously liable such as a fellow-employee) the proportion attributable to the employee's contributory negligence should be assessed and liability apportioned accordingly<sup>3</sup>.

The principle *volenti non fit injuria* is not a defence to a claim for breach of statutory duty<sup>4</sup>, but it may be relied upon where the employer is not personally or vicariously in breach of statutory duty and where the claimant himself assented to and took part in a breach of statutory duty<sup>5</sup>.

The statutory grounds which enable the occupier of a factory to exempt himself from criminal liability<sup>6</sup> do not afford him a defence to a civil claim for breach of statutory duty<sup>7</sup>.

1 *Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152, [1939] 3 All ER 722, HL; *Stapley v Gypsum Mines Ltd* [1953] AC 663, [1953] 2 All ER 478, HL.

2 It is not for every risky thing which a workman in a factory may do in his familiarity with the machinery that he ought to be held guilty of contributory negligence: see *Flower v Ebbw Vale Steel, Iron and Coal Co Ltd* [1934] 2 KB 132 at 140, CA, per PO Lawrence J, cited with approval by Lord Wright in the same case on appeal [1936] AC 206 at 214, HL; *Stringer v Automatic Woodturning Co Ltd* [1956] 1 All ER 327, [1956] 1 WLR 138, CA; on appeal sub nom *Automatic Woodturning Co Ltd v Stringer* [1957] AC 544, [1957] 1 All ER 90, HL (where the point was not referred to). It seems that this doctrine does not apply to claims based on negligence at common law where there is no evidence of repetitive work done under strain: see *Staveley Iron and Chemical Co Ltd v Jones* [1956] AC 627, [1956] 1 All ER 403, HL.

3 Law Reform (Contributory Negligence) Act 1945 s 1 (amended by the Carriage by Air Act 1961 s 14(3), Sch 2; the Fatal Accidents Act 1976 s 6(2), Sch 2; and the Civil Liability (Contribution) Act 1978 s 9(2), Sch 2). The doctrine of contributory negligence applies to breach of statutory duty: see *Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152, [1939] 3 All ER 722, HL; and eg *Eyres v Atkinsons Kitchens and Bedrooms Ltd* [2007] EWCA Civ 365, (2007) 151 Sol Jo LB 576, [2007] All ER (D) 201 (Apr) (traffic accident partly employer's fault for causing employee to work long hours and drive while tired). As to the principles of apportionment see **DAMAGES; NEGLIGENCE** vol 78 (2010) PARA 75 et seq. The Health and Safety at Work etc Act 1974 and subordinate legislation impose statutory duties upon persons employed with a view to securing safety: see eg ss 7, 8; and PARA 446; and the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 10(2); and PARA 528.

4 *Wheeler v New Merton Board Mills Ltd* [1933] 2 KB 669, CA.

5 *Imperial Chemical Industries Ltd v Shatwell* [1965] AC 656, [1964] 2 All ER 999, HL. As to *volenti non fit injuria* see **NEGLIGENCE** vol 78 (2010) PARA 69 et seq.

6 The provisions are now only those of the Factories Act 1961 s 163: see PARA 863.

7 *Potts (or Riddell) v Reid* [1943] AC 1, [1942] 2 All ER 161, HL, per Lord Thankerton; *Gallagher v Dorman, Long & Co Ltd* [1947] 2 All ER 38, CA; see also PARA 419.

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#### **419. Delegation of statutory duty.**

If a duty is imposed on an employer by statute<sup>1</sup> and he delegates its performance to an employee, the employer remains liable, unless the statute otherwise provides, for any breach of duty whether he knows of it or not<sup>2</sup>. In a claim based on breach of statutory duty, if the employee is himself in breach of statutory duty, whether that duty be one delegated to him by his employer or imposed upon him by an enactment, and the employer's fault consists solely of, and is coextensive with, the employee's wrongful act, the employee will not recover, but if there is some fault on the employer's part which goes beyond or is independent of the employee's wrongful act and was a cause of the accident, the employer has some liability<sup>3</sup>.

1 As to an employer's statutory duty see **EMPLOYMENT** vol 39 (2009) PARA 34.

2 *Lochgelly Iron and Coal Co Ltd v M'Mullan* [1934] AC 1, HL, per Lord Atkin.

3 See *Ginty v Belmont Building Supplies Ltd* [1959] 1 All ER 414; *McMath v Rimmer Bros (Liverpool) Ltd* [1961] 3 All ER 1154, [1962] 1 WLR 1, CA; and *Ross v Associated Portland Cement Manufacturers Ltd* [1964] 2 All ER 452, [1964] 1 WLR 768, HL. Thus a claimant need do no more than prove that there has been a breach of an enactment making the factory occupier absolutely liable and that the breach caused the accident. The onus is then on the occupier to prove that he was not in any way at fault but that the claimant alone was to blame. To discharge this onus the occupier must establish that he took all reasonable steps to avoid the breach including, in appropriate cases, steps to acquaint the claimant with the provisions of the breached enactment even though on the facts of the particular case a failure to take those steps would not constitute negligence at common law: *Boyle v Kodak Ltd* [1969] 2 All ER 439, [1969] 1 WLR 661, HL. Nevertheless, there may be cases in which the injury suffered by the claimant may be held to have been caused entirely by his own fault even though there has been a breach of statutory duty on the part of his employer and though a situation of coterminous fault does not exist: *Horne v Lec Refrigeration Ltd* [1965] 2 All ER 898; *Leach v Standard Telephones and Cables Ltd* [1966] 2 All ER 523, [1966] 1 WLR 1392; *Baker v J Clarke (Leeds) Ltd* [1992] PIQR P262, CA. However, these cases are rare and when an employer is in breach of an absolute duty which the injured employee has in no way caused, the employer (save in certain cases of wilful as opposed to negligent conduct) is liable and cannot wholly escape by establishing contributory negligence. In that behalf there is a distinction between cases where the duty to adopt a security measure lies squarely and solely on the employer and cases where the employer's duty, although absolute, can only be performed by the aid of the employee who is injured: *McGuinness v Key Markets Ltd* (1972) 13 KIR 249, CA.

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## **(ii) Provisions of the Health and Safety at Work etc Act 1974**

### **420. Duties imposed generally by the Health and Safety at Work etc Act 1974.**

The Health and Safety at Work etc Act 1974 imposes general duties on employers in relation to their employees<sup>1</sup>; on employers and the self-employed in relation to persons other than their employees<sup>2</sup>; on persons concerned with premises in relation to persons other than their employees<sup>3</sup>; on manufacturers as regards articles and substances for use at work<sup>4</sup>; and on employees<sup>5</sup>. It provides a general duty not to interfere with or misuse things provided pursuant to the relevant statutory provisions<sup>6</sup>, and a duty not to charge employees for things done or provided in pursuance of any specific requirement of the relevant statutory provisions<sup>7</sup>.

Failure by any person to discharge any of these general duties to which he is subject is an offence<sup>8</sup>, but does not give rise to civil liability<sup>9</sup> except in so far as it would do so apart from the provisions of the Health and Safety at Work etc Act 1974<sup>10</sup>. However, breach of any duty imposed by health and safety regulations made under the Health and Safety at Work etc Act 1974 is actionable, except in so far as the regulations themselves provide otherwise<sup>11</sup>.

1 See the Health and Safety at Work etc Act 1974 s 2; and PARA 421. As to the meaning of 'employee' see PARA 302 note 4. As to the application of Pt I (ss 1-54) to the police see **POLICE** vol 36(1) (2007 Reissue) PARA 406.

2 See the Health and Safety at Work etc Act 1974 s 3; and PARA 422. As to the meaning of 'self-employed person' see PARA 302 note 5.

3 See the Health and Safety at Work etc Act 1974 s 4; and PARA 423.

4 See the Health and Safety at Work etc Act 1974 s 6; and PARA 531.

5 See the Health and Safety at Work etc Act 1974 s 7; and PARA 446.

6 See the Health and Safety at Work etc Act 1974 s 8; and PARA 446. As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

7 See the Health and Safety at Work etc Act 1974 s 9, which provides that no employer may levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

8 Health and Safety at Work etc Act 1974 s 33(1)(a). Subject to any provision made by virtue of s 15(6)(d) (see PARA 425), a person guilty of an offence consisting of failing to discharge a duty under ss 2-6 is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000, or both, or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both: s 33(2), (3), Sch 3A para 1 Table (s 33(2), (3) substituted and Sch 3A added by the Health and Safety (Offences) Act 2008 s 1, Sch 1). Contravention of the provisions of the Health and Safety at Work etc Act 1974 s 7 is also an offence under s 33(1)(a) but the punishment is, on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both, or, on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both: Sch 3A para 1 Table (as so added). Contravention of ss 8, 9 is also an offence (s 33(1)(b)), punishable, in the case of a contravention of s 8, on summary conviction with imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000, or both, or, on conviction on indictment, with imprisonment for a term not exceeding two years or a fine, or both; and, in the case of a contravention of s 9, on summary conviction with a fine not exceeding £20,000 and on conviction on indictment with a fine (Sch 3A para 1 Table (as so added)). As to the statutory maximum see PARA



853 note 9. As to the enforcing authority see PARA 370 et seq. As to prosecutions and offences generally see PARA 852 et seq.

9 Health and Safety at Work etc Act 1974 s 47(1)(a). Section 9 appears to be an exception to this provision, which relates expressly only to ss 2-8.

10 Health and Safety at Work etc Act 1974 s 47(4).

11 Health and Safety at Work etc Act 1974 s 47(2) (amended by the Employment Protection Act 1975 Sch 15 para 14, Sch 18). See eg the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22; and PARA 416.

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#### **421. General duty of employers to their employees.**

It is the duty of every employer to ensure, so far as is reasonably practicable<sup>1</sup>, the health, safety and welfare at work of all his employees<sup>2</sup>; in particular<sup>3</sup>:

- 302 (1) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health<sup>4</sup>;
- 303 (2) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances<sup>5</sup>;
- 304 (3) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees<sup>6</sup>;
- 305 (4) so far as is reasonably practicable, the maintenance of any place under the employer's control and the provision and maintenance of means of access to and egress from it, in a condition that is safe and without risks to health<sup>7</sup>; and
- 306 (5) the provision of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work<sup>8</sup>.

It is the duty of every employer to consult the appointed safety representatives of recognised trade unions<sup>9</sup> with a view to making and maintaining arrangements to enable the employer and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees and for checking the effectiveness of those measures<sup>10</sup>; and his duty, if requested to do so by those safety representatives, to establish<sup>11</sup> a safety committee to review the measures taken to ensure the health and safety at work of his employees<sup>12</sup>.

1 As to the meaning of 'reasonably practicable' see PARA 417.

2 Health and Safety at Work etc Act 1974 s 2(1). As to the meaning of 'employee' see PARA 302 note 4. The duty is not confined to employees engaged in a specific process, but applies to all employees of an employer: *Bolton Metropolitan Borough Council v Malrod Insulations Ltd* [1993] ICR 358, [1993] IRLR 274 (breach of duty when equipment with dangerous electrical faults made available for use even though there was no evidence of actual use). It is extended to apply to students at educational establishments where courses are provided in relation to activities involving genetic modification: see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 5(1); and PARA 600.

Subject to reasonable practicability (see PARA 417), the Health and Safety at Work etc Act 1974 s 2(1) imposes strict liability on an employer whenever there is a failure to ensure his employees' health, safety and welfare at work; and in the case of a corporate employer, a company may be liable for failure to take reasonable precautions at store management level, notwithstanding that all reasonable precautions to avoid risk of injury to employees have been taken at senior management or head office level: *R v Gateway Foodmarkets Ltd* [1997] 3 All ER 78, [1997] 2 Cr App Rep 40, CA. Cf *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, CA, cited in PARA 417 note 3; but see the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21; and PARA 859. An employer may be acquitted of breach of duty under the Health and Safety at Work etc Act 1974 s 2(1), but convicted of breach of duty under s 3(1): *R v B & Q plc* [2005] EWCA Crim 2297, (2005) Times, 3 November, [2005] All ER (D) 153 (Sep); and see further PARA 422.

3 le but without prejudice to the generality of the duty: Health and Safety at Work etc Act 1974 s 2(2).

4 Health and Safety at Work etc Act 1974 s 2(2)(a). The duty extends to those employees who will be at work as well as to those who are at work. 'Provision' means 'supplying or making available', and accordingly if an employee makes available plant which is not safe there is a breach of duty even though the plant in question has not been and is not being used: *Bolton Metropolitan Borough Council v Malrod Insulations Ltd* [1993] ICR 358, [1993] IRLR 274; *Norris v Syndic Manufacturing Co* [1952] 2 QB 135, sub nom *Norris v Syndi Manufacturing Co Ltd* [1952] 1 All ER 935, CA. See also *King v Smith (t/a Clean Glo)* [1995] ICR 339, sub nom *King v Smith* [1995] PIQR P48, CA (employer's failure to employ safe system of work for window cleaner).

'Risk to health' conveys the idea of a possibility of danger and is not restricted to 'actual danger': *R v Board of Trustees of the Science Museum* [1993] 3 All ER 853, [1993] 1 WLR 1171, CA. See also *R v HTM Ltd* [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383. The Health and Safety at Work etc Act 1974 s 2(1), (2) (a) does not, however, outlaw work activities merely on the basis that they are by any ordinary standards regarded as dangerous: *Canterbury City Council v Howletts and Port Lympne Estates Ltd* [1997] ICR 925, sub nom *Langridge v Howletts and Port Lympne Estates Ltd* 95 LGR 798.

5 Health and Safety at Work etc Act 1974 s 2(2)(b).

6 Health and Safety at Work etc Act 1974 s 2(2)(c).

7 Health and Safety at Work etc Act 1974 s 2(2)(d).

8 Health and Safety at Work etc Act 1974 s 2(2)(e). The Health and Safety Executive has issued guidance on work-related road safety. As to the Health and Safety Executive see PARA 361 et seq.

9 le representatives appointed under regulations made under the Health and Safety at Work etc Act 1974 s 2(4): see the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500; and PARA 450.

10 Health and Safety at Work etc Act 1974 s 2(6).

11 In accordance with regulations made by the Secretary of State: Health and Safety at Work etc Act 1974 s 2(7).

12 Health and Safety at Work etc Act 1974 s 2(7) (amended by the Employment Protection Act 1975 s 116, Sch 15 para 2).

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#### **422. Duties of employers and the self-employed to persons other than their employees.**

Every employer and every self-employed person<sup>1</sup> must conduct his undertaking in such a way as to ensure, so far as is reasonably practicable<sup>2</sup>, that persons not in his employment who may be affected thereby are not thereby exposed to risks<sup>3</sup> to their health and safety<sup>4</sup>. A self-employed person owes the same duty to himself<sup>5</sup>. Each must give such persons prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health and safety<sup>6</sup>.

The above duty is not to be confused with an employer's vicarious liability for the tortious act of another<sup>7</sup>. It creates absolute liability, subject to the defence of reasonable practicability<sup>8</sup> and cannot be delegated<sup>9</sup>.

1 As to the meaning of 'self-employed person' see PARA 302 note 5. The reference to a self-employed person is modified for the purposes of certain health and safety regulations: see eg the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 5(2); and PARA 600; the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 19; and PARA 622 note 22.

2 As to the meaning of 'reasonably practicable' see PARA 417. An employer whose employee has carried out work negligently thereby exposing persons not in his employment to risks to health and safety is not precluded from establishing for these purposes on the balance of probability that all that was reasonably practicable had been done to ensure that such persons were not exposed to such risks: *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, CA.

3 'Risk to health' conveys the idea of a possibility of danger and is not restricted to 'actual danger': *R v Board of Trustees of the Science Museum* [1993] 3 All ER 853, [1993] 1 WLR 1171, CA. See also *R v HTM Ltd* [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383.

4 Health and Safety at Work etc Act 1974 s 3(1) (employers); s 3(2) (self-employed). The conduct of an undertaking is not confined to cases where that undertaking is being actively carried on at the time that the risk to health materialises, but is more general: see *R v Associated Octel Co Ltd* [1996] 4 All ER 846, [1996] 1 WLR 1543, HL (owner of chemical plant responsible for independent contractor injured while repairing and maintaining plant); and see *R v Mara* [1987] 1 All ER 478, [1987] 1 WLR 87, CA (cleaning company responsible for non-employee using defective cleaning machine and electrocuted thereby); *R v British Steel plc* [1995] 1 WLR 1356, [1995] IRLR 310, EAT.

5 Health and Safety at Work etc Act 1974 s 3(2). No regulations have been made giving effect to s 3(2).

6 Health and Safety at Work etc Act 1974 s 3(3). As to the meaning of 'prescribed' see PARA 305 note 10. See eg the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 10; and PARA 430.

7 *R v Associated Octel Co Ltd* [1996] 4 All ER 846, [1996] 1 WLR 1543, HL.

8 *R v British Steel plc* [1995] 1 WLR 1356, [1995] IRLR 310, EAT; and see *R v Rhône-Poulenc Rorer Ltd* [1996] ICR 1054, [1996] Crim LR 656, CA (defendant's duty not affected by fact that deceased worker disobeyed instructions in carrying out action which caused his death). As to what is reasonably practicable see PARA 417; and see *R (on the application of Pullen) v Health and Safety Executive* [2003] EWHC 2934 (Admin), [2003] All ER (D) 174 (Dec) (housing estate owned by a local authority and maintained by a housing association; vandals removed a steel-framed security door from its hinges and propped it against a wall in a communal area of a block of flats; the door fell on the applicant's son causing serious brain damage which led to his death; on an application for judicial review of the Health and Safety Executive's decision not to prosecute the housing association for breach of the duty under the Health and Safety at Work etc Act 1974 s 3, it was held that the case differed from the generality of cases under s 3 in that the original act of commission was that of a

vandal or vandals over whom neither the local authority nor the association had any conceivable control; the maintenance system used was as effective as was reasonably practicable and there was no prospect of a successful prosecution).

9 *R v British Steel plc* [1995] 1 WLR 1356, [1995] IRLR 310, EAT (an employer cannot delegate his duty under the Health and Safety at Work etc Act 1974 s 3, nor can a corporate employer avoid the duty on the basis that responsibility for health and safety was held by a person who was not part of its senior management). See also see the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21; and PARA 859.

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#### **423. General duties of persons concerned with premises to persons other than their employees.**

It is the duty of each person who has, to any extent, control of non-domestic premises<sup>1</sup> made available to persons who are not his employees<sup>2</sup> as a place of work<sup>3</sup>, or as a place where they may use plant or substances provided for their use there, or who has control of the means of access thereto or egress therefrom, or of any plant or substance in those premises, to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable<sup>4</sup>, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe<sup>5</sup> and without risks to health<sup>6</sup>. This duty extends to other non-domestic premises used in connection with such premises<sup>7</sup>.

1 Any reference in the Health and Safety at Work etc Act 1974 s 4 to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): s 4(4). Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to (1) the maintenance or repair of any premises to which s 4 applies or any means of access thereto or egress therefrom; or (2) the safety of or the absence of risks to health arising from plant or substances in any such premises, he must be treated for the purposes of this duty as being a person who has control of the matters to which his obligation extends: s 4(3). As to the meaning of 'domestic premises' see PARA 302 note 6; and as to the meanings of 'plant' and 'substance' see PARA 302 note 7. See also *Westminster City Council v Select Managements Ltd* [1985] 1 All ER 897, [1985] 1 WLR 576, CA (common parts of a block of flats were 'non-domestic premises'; further, they were made available as a 'place of work' to non-employees of the management company who came to repair and maintain the premises, or, alternatively, the lifts and electrical installations in the common parts were 'plant' provided for the use of such persons. Accordingly, the management company was under a duty, in accordance with the Health and Safety at Work etc Act 1974 s 4, to ensure that they were kept safe).

More than one person may have such control and thus be under the duty imposed by s 4, in contrast to the unified control contemplated in ss 2, 3 (see PARAS 421-422): see *Austin Rover Group Ltd v HM Inspector of Factories* [1990] 1 AC 619, sub nom *Mailer v Austin Rover Group plc* [1989] 2 All ER 1087, HL.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'work' see PARA 302 note 1.

4 As to the meaning of 'reasonably practicable' see PARA 417.

5 The question of safety must be considered in the light of the purposes for which the premises are being used at any one time, and not merely with regard to the condition they were in when they were first made available for non-employees to work in: *Austin Rover Group Ltd v HM Inspector of Factories* [1990] 1 AC 619, sub nom *Mailer v Austin Rover Group plc* [1989] 2 All ER 1087, HL, per Lord Jauncey of Tullichettle.

6 Health and Safety at Work etc Act 1974 s 4(1), (2). As to the meaning of 'risk to health' see PARA 422 note 3. Consideration must be given not only to the extent to which the individual in question has control of the premises, but also to his knowledge and reasonable foresight at all material times. Thus when a person makes available premises for use by another, the reasonableness of the measures which he requires to take to ensure the safety of those premises must be determined in the light of his knowledge of the anticipated use for which the premises have been made available and of the extent of his control and knowledge, if any, of the actual use thereafter: see *Austin Rover Group Ltd v HM Inspector of Factories* [1990] 1 AC 619 at 635, sub nom *Mailer v Austin Rover Group plc* [1989] 2 All ER 1087 at 1098, HL, per Lord Jauncey of Tullichettle. Cf at 627 and at 1092 per Lord Goff of Chieveley ('subject to the limited qualification embodied in the phrase 'so far as is reasonably practicable', it seems to me that the duty imposed on the defendant to ensure that the relevant premises are safe and without risk to health for any use for which they are made available is prima facie absolute').

7 Health and Safety at Work etc Act 1974 s 4(1). For example, s 4(1) can be applied for the benefit and protection of children using a commercially-operated play centre: *Moualem v Carlisle City Council* (1994) 158 JP 1110, DC.

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#### **424. Purposes of health and safety regulations.**

The Secretary of State<sup>1</sup> has power to make health and safety regulations<sup>2</sup> for the general purposes<sup>3</sup> of Part I of the Health and Safety at Work etc Act 1974<sup>4</sup>. Without prejudice to the generality of this power, those regulations may, for any of those general purposes, make provision for certain specified<sup>5</sup> purposes<sup>6</sup>.

If the power to make health and safety regulations is extended so as to apply to or in relation to persons, premises or work outside Great Britain<sup>7</sup>, then, notwithstanding that extension, health and safety regulations (except in so far as they expressly so provide) will not apply to or in relation to aircraft in flight, vessels, hovercraft or offshore installations<sup>8</sup> outside Great Britain, or persons at work outside Great Britain in connection with submarine cables or submarine pipelines<sup>9</sup>.

It is an offence to contravene any health or safety regulations<sup>10</sup>, and their breach may give rise to civil liability<sup>11</sup>.

1 As to the Secretary of State see PARA 349.

2 For the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), 'health and safety regulations' means regulations made under s 15(1): ss 15(1), 53(1) (s 15(1) substituted by the Employment Protection Act 1975 s 116, Sch 15 para 6).

3 Ie for the general purposes of the Health and Safety at Work etc Act 1974 Pt I: see PARA 303 note 1.

4 Health and Safety at Work etc Act 1974 s 15(1) (as substituted (see note 2); amended by SI 2002/794). This power is subject to the provisions of the Health and Safety at Work etc Act 1974 s 50 (see PARA 350): s 15(1) (as so substituted and amended). As to powers under the regulations see PARA 425. As to the provision of practical guidance with respect to the requirements of health and safety regulations by the approval and issue of codes of practice see PARA 426.

5 'Specified' means specified in health and safety regulations (Health and Safety at Work etc Act 1974 s 15(10), Sch 3 para 23(1)); and the mention in Sch 3 of a purpose that falls within any more general purpose mentioned in it is without prejudice to the generality of the more general purpose (Sch 3 para 23(2)).

6 Health and Safety at Work etc Act 1974 s 15(2), Sch 3 (paras 1-23) (Sch 3 para 2(2) amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 12, Table Pt I). The purposes are as follows:

- 24 (1) regulating or prohibiting (a) the manufacture, supply or use of any plant or substance or the keeping of any substance; or (b) the carrying on of any process or carrying out of any operation;
- 25 (2) imposing requirements respecting (a) the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing or inspection of any plant; (b) the marking of any plant or articles used or designed for use as components of any plant and in that connection regulating or restricting the use of specified markings; (c) the testing, labelling or examination of any substance; or (d) the carrying out of research in connection with activities mentioned in the Health and Safety at Work etc Act 1974 Sch 3 para 1(1)-(4) (see heads (1), (2)(a)-(c));
- 26 (3) prohibiting the importation into or the landing or unloading in the United Kingdom of specified articles or substances, absolutely or on conditions and, if an act or omission in relation to such an importation, landing or unloading constitutes an offence under both the Act and the



Customs and Excise Acts 1979 (see **CUSTOMS AND EXCISE**) specifying under which the offence is to be punished;

- 27 (4) prohibiting or regulating the transport of specified articles or substances and imposing requirements respecting the manner and means of transport, including requirements as to the construction, testing and marking of containers and means of transport and the packaging and labelling of articles and substances in connection with transport;
- 28 (5) prohibiting the carrying on of any specified activity or the doing of any specified thing without the authority and in accordance with the terms and conditions of a licence, or except with the consent or approval of a specified authority; and providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to them);
- 29 (6) requiring the registration of any person, premises or thing in specified circumstances or as a condition of the carrying on of any specified activity or the doing of any specified thing;
- 30 (7) requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons (or persons with specified qualifications or experience, or both) to perform specified functions and imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions; and restricting the performance of specified functions to persons possessing specified qualifications or experience;
- 31 (8) regulating or prohibiting the employment of persons or any class of persons in specified circumstances;
- 32 (9) requiring the making of arrangements for securing the health of persons at work or other persons (including arrangements for medical examinations and health surveys) and for monitoring the atmospheric or other conditions in which persons work;
- 33 (10) imposing requirements respecting matters affecting the conditions in which persons work, including the structural condition and stability of premises, the means of access to and egress from them, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations, dust and fumes;
- 34 (11) securing the provision of specified welfare facilities for persons at work, including an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first aid arrangements, cloakroom accommodation and sitting and refreshment facilities;
- 35 (12) imposing requirements respecting the provision and use in specified circumstances of protective (including weatherproof) clothing or equipment;
- 36 (13) requiring specified fire precautions in certain circumstances;
- 37 (14) prohibiting or imposing requirements connected with the emission of specified gas, smoke, dust, noise, vibrations, ionising or other radiations or any other specified substance and imposing requirements respecting the monitoring of such emissions;
- 38 (15) imposing requirements respecting the instruction, training and supervision of persons at work;
- 39 (16) requiring and specifying certain matters to be notified in a specified way to specified persons;
- 40 (17) empowering inspectors (see PARAS 375-376) in certain circumstances to require submissions of proposed measures for achieving compliance with any relevant statutory provisions (see PARA 302 note 24);
- 41 (18) imposing requirements respecting the keeping and preservation of records, plans, maps and other documents;
- 42 (19) imposing requirements respecting the management of animals;
- 43 (20) as regards premises of any specified description where persons work, requiring precautions to be taken against dangers to which the premises or persons in them are or may be exposed by reason of conditions (including natural conditions) existing in the vicinity; and securing that persons in the premises leave them in specified circumstances;

- 44 (21) in specified circumstances involving a risk of fire or explosion, conferring power to search a person or any article which a person has with him for the purpose of ascertaining whether he has in his possession any article of a specified kind likely in those circumstances to cause a fire or explosion and power to seize and dispose of any such articles found;
- 45 (22) restricting, prohibiting or requiring the doing of any specified thing where any accident or other occurrence of a specified kind has occurred;
- 46 (23) as regards cases of any specified class (being a class such that the variety in the circumstances of particular cases within it calls for the making of special provision for particular cases), conferring on employers or others power to make rules or give directions with respect to matters affecting health or safety, requiring such persons to make rules with respect to any such matters, empowering specified persons to require employers or others either to make rules with respect to any such matters or to modify any such rules previously made by virtue of this provision, and making admissible in evidence without further proof (in such circumstances and subject to such conditions as may be specified) documents which purport to be copies of rules or rules of any specified class made under this provision;
- 47 (24) conferring on local or public authorities power to make byelaws respecting specified matters (specifying by whom they must be confirmed and providing for the procedure to be followed).

Where the reference is to supplying articles or substances, 'supply' means supplying by way of sale, lease, hire or hire-purchase, whether as principal or agent for another: s 53(1). As to the meanings of 'plant' and 'substance' see PARA 302 note 7; as to the meaning of 'premises' see PARA 302 note 6; as to the meanings of 'work' and 'at work' see PARA 302 note 1; and as to the meaning of 'local authority' see PARA 305 note 3. For an example of the exercise of the powers conferred by the Health and Safety at Work etc Act 1974 s 15(1), (2) see the Marking of Plastic Explosives for Detection Regulations 1996, SI 1996/890, which implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991. The regulations prohibit the manufacture of explosives which, when finished, are unmarked (reg 3) and prohibit the possession and importation of unmarked explosives (regs 4, 5). These requirements are to be enforced by the Health and Safety Executive, and apply in Great Britain and to certain activities and premises situated outside Great Britain: see regs 6, 7. For an example in relation to heads (2), (10), (13), and (15) above see the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341; and PARA 445; and for an example in relation to head (4) above, see the Health and Safety at Work etc Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002, SI 2002/282; and PARA 303.

7 le under the Health and Safety at Work etc Act 1974 s 84(3): see PARA 305.

8 As to the meaning of 'offshore installation' see PARA 302 note 6.

9 Health and Safety at Work etc Act 1974 s 15(9).

10 Health and Safety at Work etc Act 1974 s 33(1)(c) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 11, Sch 18). As to the penalty see PARA 853.

11 See PARA 416.

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#### **425. Powers under health and safety regulations.**

Health and safety regulations<sup>1</sup> may:

- 307 (1) repeal or modify<sup>2</sup> any of the existing statutory provisions<sup>3</sup>;
- 308 (2) exclude or modify in relation to any specified<sup>4</sup> class of case any of the provisions of the Health and Safety at Work etc Act 1974 relating to employers' duties<sup>5</sup> or any of the existing statutory provisions<sup>6</sup>;
- 309 (3) make a specified authority or class of authorities responsible, to such extent as may be specified, for the enforcement of any of the relevant statutory provisions<sup>7</sup>;
- 310 (4) impose requirements by reference to the approval of the Health and Safety Executive<sup>8</sup> or any other specified body or person<sup>9</sup>;
- 311 (5) provide for references in the regulations to any specified document to operate as references to that document as revised or reissued from time to time<sup>10</sup>;
- 312 (6) provide, either unconditionally or subject to conditions and with or without a time limit, for exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions<sup>11</sup>;
- 313 (7) enable exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions to be granted (either unconditionally or subject to conditions and with or without a time limit) by any specified person or by any person authorised in that behalf by a specified authority<sup>12</sup>;
- 314 (8) specify the persons or classes of persons who, in the event of a contravention<sup>13</sup> of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons or classes of persons<sup>14</sup>;
- 315 (9) provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions either generally or in specified circumstances<sup>15</sup>;
- 316 (10) exclude proceedings on indictment in relation to offences consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, certain provisions of the Health and Safety at Work etc Act 1974<sup>16</sup> or health and safety regulations<sup>17</sup>;
- 317 (11) restrict the punishments which may be imposed in respect of any such offence as is mentioned in head (10) above<sup>18</sup>;
- 318 (12) make provision for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of bringing any such offence within the field of responsibility<sup>19</sup> of any enforcing authority<sup>20</sup> or conferring jurisdiction on any court to entertain proceedings for any such offence<sup>21</sup>; and
- 319 (13) take the form of regulations applying only to particular circumstances or only to a particular case, such as regulations applying only to particular premises<sup>22</sup>.

1 As to the meaning of 'health and safety regulations' see PARA 424 note 2.

2 As to the meaning of 'modifications' see PARA 350 note 7.

3 Health and Safety at Work etc Act 1974 s 15(3)(a). Eg the Factories Act 1961 s 72 (former prohibition on heavy lifting) was repealed by the Manual Handling Operations Regulations 1992, SI 1992/2793: see PARA 583. It was held, in the context of regulations made under the now repealed provisions of the Factories Act 1961, that if regulations expressly provided that they were to be in substitution for the provisions of that Act, then the provisions of the Act were to that extent displaced, but that even in the absence of such express provision the regulations generally were to be read in substitution for the corresponding provisions of the Act: *Miller v William Boothman & Sons Ltd* [1944] KB 337, [1944] 1 All ER 333, CA; *Automatic Woodturning Co Ltd v Stringer* [1957] AC 544, [1957] 1 All ER 90, HL. However, in respect of matters not expressly provided for in the regulations, the obligations of the Factories Act 1961 remained unimpaired: *Benn v Kamm & Co Ltd* [1952] 2 QB 127, [1952] 1 All ER 833, CA; *Dickson v Flack* [1953] 2 QB 464, [1953] 2 All ER 840, CA. As to the meaning of 'existing statutory provisions' see PARA 302 note 12.

The former health and safety provisions of various statutes (principally the Mines and Quarries Act 1954; the Agriculture (Safety, Health and Welfare Provisions) Act 1956; the Factories Act 1961; and the Offices, Shop and Railways Premises Act 1963) have been almost entirely codified in this way. European Community directives relating to health and safety at work are implemented by regulations either made (1) in the course of this codification (eg EC Council Directive 89/654 (OJ L393, 30.12.1989, p 1) led to the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004: see PARA 456 et seq; and see further PARA 342); (2) under the European Communities Act 1972 (see eg the Personal Protective Equipment Regulations 2002, SI 2002/1144; and PARAS 567-568); or (3) under both the 1972 and 1974 Acts (see eg the Control of Major Accident Hazards Regulations 1999, SI 1999/743; and PARA 662 et seq).

There is also power under the Deregulation and Contracting Out Act 1994 to repeal any of the 'existing statutory provisions' or revoke any provision of regulations under the Health and Safety at Work etc Act 1974 s 15 which has effect in place of a provision which was an 'existing statutory provision': see the Deregulation and Contracting Out Act 1994 s 37(1)(a), (b). As to the general power under the Legislative and Regulatory Reform Act 2006 to reform legislation imposing a burden affecting persons in the carrying on of any activity see PARA 850.

4 As to the meaning of 'specified' see PARA 424 note 5.

5 ie those of the Health and Safety at Work etc Act 1974 ss 2-9: see PARAS 421-423, 446.

6 Health and Safety at Work etc Act 1974 s 15(3)(b).

7 Health and Safety at Work etc Act 1974 s 15(3)(c). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

8 As to the Health and Safety Executive see PARA 361 et seq.

9 Health and Safety at Work etc Act 1974 s 15(4)(a) (amended by SI 2008/960).

10 Health and Safety at Work etc Act 1974 s 15(4)(b).

11 Health and Safety at Work etc Act 1974 s 15(5)(a).

12 Health and Safety at Work etc Act 1974 s 15(5)(b).

13 As to the meaning of 'contravention' see PARA 369 note 6.

14 Health and Safety at Work etc Act 1974 s 15(6)(a).

15 Health and Safety at Work etc Act 1974 s 15(6)(b). No provision so made affords a defence in any civil proceedings whether brought by virtue of s 47(2) (see PARA 420) or not; but as regards a duty imposed as mentioned in s 47(2), health and safety regulations may provide for any specified defence to be available in any claim for breach of that duty: s 47(3) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 14, Sch 18). The wording of the statute is 'action'; as to the replacement of the term 'action' by the term 'claim' in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 18.

16 ie the Health and Safety at Work etc Act 1974 ss 2-9 (see the text and note 5): s 15(6)(c).

17 Health and Safety at Work etc Act 1974 s 15(6)(c).

18 Health and Safety at Work etc Act 1974 s 15(6)(d).

19 As to the field of responsibility see PARA 375 note 3.

20 As to the meaning of 'enforcing authority' see PARA 352 note 2.

21 Health and Safety at Work etc Act 1974 s 15(7). This is without prejudice to s 35 (see PARA 856): s 15(7).

22 Health and Safety at Work etc Act 1974 s 15(8). As to the power to provide that s 15 is to extend outside Great Britain see s 84(3); and PARA 305.

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#### 426. Codes of practice.

For the purpose of providing practical guidance with respect to the requirements of certain provisions of the Health and Safety at Work etc Act 1974 relating to employers' duties<sup>1</sup>, or of health and safety regulations<sup>2</sup>, or the existing statutory provisions<sup>3</sup>, the Health and Safety Executive<sup>4</sup> with the Secretary of State's consent<sup>5</sup> may (1) approve and issue such codes of practice<sup>6</sup>, whether prepared by it or not, as in its opinion are suitable for that purpose<sup>7</sup>; and (2) approve such codes of practice issued or proposed to be issued otherwise than by the Executive<sup>8</sup> as in its opinion are suitable for that purpose<sup>9</sup>.

The Executive may also (a) from time to time revise the whole or any part of any code of practice prepared by it<sup>10</sup>; and (b) approve the revision or proposed revision of the whole or any part of any approved code of practice<sup>11</sup>.

The Executive may at any time with the Secretary of State's consent<sup>12</sup> withdraw its approval from any approved code of practice<sup>13</sup>.

1    Ie the Health and Safety at Work etc Act 1974 ss 2-7 (see PARAS 421-423, 446): s 16(1), (1A)(a) (s 16(1) amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 7, Sch 18; and the Railways Act 2005 s 2, Sch 3 para 9(1); Health and Safety at Work etc Act 1974 s 16(1A) added by the Railways Act 2005 Sch 3 para 9(2)).

2    Ie except so far as they make provision exclusively in relation to transport systems falling within the Railways Act 2005 Sch 3 para 1(3) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 196): Health and Safety at Work etc Act 1974 s 16(1A)(b) (as added: see note 1). As to the meaning of 'health and safety regulations' see PARA 424 note 2.

3    Ie which are not such provisions by virtue of the Railways Act 1993 s 117(4) (see PARA 302 note 12): Health and Safety at Work etc Act 1974 s 16(1A)(c) (as added: see note 1). As to the meaning of 'existing statutory provisions' see PARA 302 note 12.

4    As to the Health and Safety Executive see PARA 361 et seq.

5    As to the Secretary of State see PARA 349. Before seeking his consent, the Health and Safety Executive must consult (1) any government department or other body that appears to it to be appropriate (particularly, in the case of a code relating to electro-magnetic radiations, the Health Protection Agency) (Health and Safety at Work etc Act 1974 s 16(2)(a) (amended by the Health Protection Agency Act 2004 s 11(1), Sch 3 para 5(1), (2); and by SI 2008/960); and (2) such government departments and other bodies, if any, as, in relation to any matter dealt with in the code, the Executive is required to consult under the Health and Safety at Work etc Act 1974 s 16 by virtue of directions given to it by the Secretary of State (s 16(2)(b) (amended by SI 2008/960)). As to the Health Protection Agency see **HEALTH SERVICES** vol 54 (2008) PARAS 213-227.

6    As to the meaning of 'code of practice' see PARA 302 note 9. In authorising the issue and approval of codes of practice, which was a new departure in the field of safety legislation, the Health and Safety at Work etc Act 1974 gives statutory effect to a recommendation of the Report of the Robens Committee on Safety and Health at Work 1970-72 (Cmnd 5034), which it regarded as central to its philosophy, with a view to encouraging industry to deal with more of its own problems and enabling official regulations to be more effectively concentrated on serious problems where it is appropriate and necessary. As to the purposes of health and safety regulations see PARA 424.

7    Health and Safety at Work etc Act 1974 s 16(1)(a). Codes of Practice have been issued in respect of a number of regulations.

8    The power to approve a code of practice issued or proposed to be issued otherwise than by the Health and Safety Executive includes power to approve a part of that code, and in the Health and Safety at Work etc Act

1974 Pt I (ss 1-54) 'code of practice' may be read as including a part of that code of practice: s 16(8) (amended by SI 2008/960).

9 Health and Safety at Work etc Act 1974 s 16(1)(b) (amended by SI 2008/960). Where the Health and Safety Executive thus approves a code of practice, it must issue a written notice (1) identifying the code in question and stating the date on which its approval is to take effect (Health and Safety at Work etc Act 1974 s 16(3)(a) (amended by SI 2008/960)); and (2) specifying for which of the provisions mentioned in s 16(1) the code is approved (s 16(3)(b)). As to the effect of a failure to observe a code of practice see PARA 427. As to the authority of codes of practice see eg *Ellis v Bristol City Council* [2007] EWCA Civ 685, [2007] ICR 1614.

10 Health and Safety at Work etc Act 1974 s 16(4)(a) (s 16(4) amended by SI 2008/960).

11 Health and Safety at Work etc Act 1974 s 16(4)(b). The provisions of s 16(2), (3) (see notes 5, 9), with the necessary modifications, apply in relation to the approval of any such revision: s 16(4). References in Pt I to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under s 16: s 16(7).

12 Before seeking the Secretary of State's consent, the Health and Safety Executive must consult the same government departments and other bodies as are referred to in note 5, as if it were proposing to approve the code: Health and Safety at Work etc Act 1974 s 16(5) (amended by SI 2008/960).

13 Health and Safety at Work etc Act 1974 s 16(5) (as amended: see note 12). Where such approval is withdrawn, the Health and Safety Executive must issue a written notice identifying the code in question and stating the date on which its approval is to cease to have effect: s 16(6) (amended by SI 2008/960).

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#### **427. Non-observance of codes of practice.**

A failure on the part of any person to observe any provision of an approved code of practice<sup>1</sup> does not of itself render him liable to any civil or criminal proceedings<sup>2</sup>. However, where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention<sup>3</sup> of any requirement or prohibition imposed by or under certain provisions of the Health and Safety at Work etc Act 1974 relating to general duties<sup>4</sup> or of health and safety regulations<sup>5</sup> or of any of the existing statutory provisions<sup>6</sup>, being a provision for which there was an approved code of practice at the time of the alleged contravention, then any provision of that code which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened is admissible in evidence in the proceedings<sup>7</sup>. If it is then proved that there was at any material time a failure to observe any provision of the code which appears to the court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter must be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code<sup>8</sup>.

1 As to the issue and approval of codes of practice see PARA 426.

2 Health and Safety at Work etc Act 1974 s 17(1).

3 As to the meaning of 'contravention' see PARA 369 note 6.

4 I.e. the Health and Safety at Work etc Act 1974 ss 2-7 (see PARAS 421-423, 446).

5 As to the meaning of 'health and safety regulations' see PARA 424 note 2.

6 As to the meaning of 'existing statutory provisions' see PARA 302 note 12.

7 Health and Safety at Work etc Act 1974 s 17(1), (2).

8 Health and Safety at Work etc Act 1974 s 17(2). In any criminal proceedings (1) a document purporting to be a notice issued by the Health and Safety Executive under s 16 (see PARA 426 notes 9, 13) is to be taken to be such a notice unless the contrary is proved (s 17(3)(a) (amended by SI 2008/960)); and (2) a code of practice which appears to the court to be the subject of such a notice must be taken to be the subject of that notice unless the contrary is proved (Health and Safety at Work etc Act 1974 s 17(3)(b)).



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## **(2) MANAGEMENT OF HEALTH AND SAFETY AT WORK**

### **(i) Introduction**

#### **428. The Management of Health and Safety at Work Regulations 1999.**

Management of health and safety in workplaces generally is regulated by the Management of Health and Safety at Work Regulations 1999<sup>1</sup> which came into force on 29 December 1999<sup>2</sup>. The 1999 regulations do not apply to or in relation to the master or crew of a ship<sup>3</sup>, or to the employer of such persons, in respect of the normal ship-board activities<sup>4</sup> of a ship's crew which are carried out solely by the crew under the direction of the master<sup>5</sup>, and certain of them<sup>6</sup> do not apply to occasional work or short-term work involving work regarded as not being harmful, damaging or dangerous to young people in a family undertaking<sup>7</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt:

- 320 (1) any of the home forces<sup>8</sup>, any visiting force<sup>9</sup> or any headquarters<sup>10</sup> from those requirements of the 1999 regulations which impose obligations, other than those obligations concerned with the health and safety of new or expectant mothers<sup>11</sup>; or
- 321 (2) any member of the home forces, any member of a visiting force or any member of a headquarters<sup>12</sup> from the requirements imposed on employees<sup>13</sup>;

and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State by a further certificate in writing at any time<sup>14</sup>.

The provisions of the 1999 regulations are set out below<sup>15</sup>. Breach of a duty imposed on an employer by those regulations does not confer a right of action in any civil proceedings in so far as that duty applies for the protection of a third party<sup>16</sup>. Breach of a duty imposed on an employee<sup>17</sup> does not confer a right of action in any civil proceedings in so far as that duty applies for the protection of a third party<sup>18</sup>.

The regulations are supported by an approved code of practice<sup>19</sup>.

1 le the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 429 et seq.

2 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(1).

Subject to reg 2 (see the text and notes 3-5), the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, apply to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59 and 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, as they apply within Great Britain: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 23(1); Interpretation Act 1978 s 17(2). For the purposes of the Health and Safety at Work etc Act 1974 Pt I, the meaning of 'at work' is extended so that an employee or a self-employed person is treated as being at work throughout the time that he is present at the premises to and in relation to which the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, apply by virtue of reg 23(1); and, in that connection, the 1999 Regulations have effect subject to the extension so effected: reg 23(2).

3 For these purposes, 'ship' includes every description of vessel used in navigation, other than a ship belonging to Her Majesty which forms part of Her Majesty's Navy: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 2(3) (reg 2 substituted by SI 2003/2457).

4 For these purposes, 'normal ship-board activities' include the construction, reconstruction or conversion of a ship outside, but not inside, Great Britain, and the repair of a ship save repair when carried out in dry dock: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 2(3) (as substituted: see note 3). As to the meaning of 'Great Britain' see PARA 305 note 7.

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 2(1) (as substituted: see note 3).

6 Ie the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 3(4), (5), 10(2) and 19: see PARA 430.

7 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 2(2) (as substituted: see note 3).

8 For these purposes, 'home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(2)(a).

9 For these purposes, 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(2)(d).

10 For these purposes, 'headquarters' means a headquarters for the time being specified in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(2)(b).

11 Ie other than the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 16-18: see PARA 431.

12 For these purposes, 'member of a headquarters' has the same meaning as in the International Headquarters and Defence Organisations Act 1964 Schedule para 1(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(2)(c).

13 Ie from the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 14: see PARA 447.

14 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(1).

15 See PARA 429 et seq.

16 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22(1) (reg 22 substituted by SI 2006/438). As to the meaning of 'third party' see PARA 416 note 18.

17 Ie under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 14.

18 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 22(2) (as substituted: see note 16).

19 As to codes of practice approved by the Health and Safety Executive see PARA 426.

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## **(ii) Employers' and Self-employed Persons' Duties**

### **A. RISK ASSESSMENT**

#### **429. Assessment by employers of risks to health and safety; in general.**

Every employer must make a suitable and sufficient assessment of:

- 322 (1) the risks to the health and safety of his employees<sup>1</sup> to which they are exposed whilst they are at work; and
- 323 (2) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions<sup>2</sup>.

Any such assessment must be reviewed by the employer who made it if there is reason to suspect that it is no longer valid<sup>3</sup> or there has been a significant change in the matters to which it relates<sup>4</sup>; and where as a result of any such review changes to an assessment are required, the employer concerned must make them<sup>5</sup>.

Where the employer employs five or more employees, he must record:

- 324 (a) the significant findings of the assessment; and
- 325 (b) any group of his employees identified by it as being especially at risk<sup>6</sup>.

Such an employer is also under a duty to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees<sup>7</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(1) (amended by SI 2005/1541). As to the relevant statutory provisions see PARA 302 note 24. As to the 1999 Regulations and their application see PARA 428.

An employer should not assume that an experienced worker is able to assess all the risks for himself; in the absence of at least an informal risk assessment, the employer will be negligent and in breach of the duty under reg 3: see eg *Sherlock v Chester City Council* [2004] EWCA Civ 210, [2004] All ER (D) 434 (Feb).

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(3)(a).

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(3)(b).

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(3) (reformatted by virtue of SI 2003/2457).

6 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(6).

7 See the Health and Safety at Work etc Act 1974 s 2(3); and PARA 394.

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#### **430. Risk assessment in respect of young persons; and protective measures.**

An employer must not employ a young person<sup>1</sup> unless he has, in relation to risks to the health and safety of young persons, made or reviewed an assessment in accordance with the provisions set out in the previous paragraph<sup>2</sup> and in accordance with the following provisions<sup>3</sup>.

In making or reviewing the assessment, an employer who employs or is to employ a young person must take particular account of:

- 326 (1) the inexperience, lack of awareness of risks and immaturity of young persons;
- 327 (2) the fitting-out and layout of the workplace and the workstation;
- 328 (3) the nature, degree and duration of exposure to physical, biological and chemical agents;
- 329 (4) the form, range, and use of work equipment and the way in which it is handled;
- 330 (5) the organisation of processes and activities;
- 331 (6) the extent of the health and safety training provided or to be provided to young persons; and
- 332 (7) risks from the specified<sup>4</sup> agents, processes and work<sup>5</sup>.

Every employer must ensure that young persons employed by him are protected at work from any risks to their health or safety which are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured<sup>6</sup>.

No employer may<sup>7</sup> employ a young person for work:

- 333 (a) which is beyond his physical or psychological capacity;
- 334 (b) involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health;
- 335 (c) involving harmful exposure to radiation;
- 336 (d) involving the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or
- 337 (e) in which there is a risk to health from extreme cold or heat, noise or vibration;

and in determining whether work will involve harm or risks for these purposes, regard must be had to the results of the assessment<sup>8</sup>. Nothing in this provision, however, prevents the employment of a young person who is no longer a child<sup>9</sup> for work:

- 338 (i) where it is necessary for his training;
- 339 (ii) where the young person will be supervised by a competent person; and

340 (iii) where any risk will be reduced to the lowest level that is reasonably practicable<sup>10</sup>.

Every employer must, before employing a child, provide a parent<sup>11</sup> of the child with comprehensible and relevant information on the risks to the child's health and safety identified by the assessment, the preventive and protective measures<sup>12</sup> and the risks notified<sup>13</sup> to him by other employers sharing the workplace<sup>14</sup>.

The provisions set out above do not apply to occasional work or short-term work involving domestic service in a private household, or work regarded as not being harmful, dangerous or damaging to young persons in a family undertaking<sup>15</sup>.

1 For these purposes, 'young person' means a person who has not attained the age of 18: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2). As to the 1999 Regulations and their application see PARA 428.

2 Ie in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(1): see PARA 429. As to the obligation to record the significant findings of the assessment where the employer employs more than five employees see reg 3(6); and PARA 429.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(4).

4 Ie the agents, processes and work listed in the Annex to the EC Council Directive on the protection of young people at work (EC Council Directive 94/33 (OJ L216, 20.08.1994, p 12), Annex). As to the protection of young people at work see further PARA 454.

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(5).

6 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 19(1).

7 Ie subject to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 19(3): see the text and notes 9-10.

8 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 19(2). For these purposes, 'assessment' means, in the case of an employer, the assessment made or changed by him in accordance with reg 3 (see PARA 429): reg 1(2).

9 For these purposes, 'child', as respects England and Wales, means a person who is not over compulsory school age, construed in accordance with the Education Act 1996 s 8 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 15): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2).

10 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 19(3). As to the meaning of 'reasonably practicable' see PARA 417.

11 The reference in the text to a parent of the child includes, in England and Wales, a person who has parental responsibility for him within the meaning of the Children Act 1989 s 3 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134): Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 10(3)(a).

12 For these purposes, 'preventive and protective measures' means the measures which have been identified by the employer in consequence of the assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2) (definition amended by SI 2005/1541). As to the relevant statutory provisions see PARA 302 note 24.

13 Ie under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 11(1)(c): see PARA 439.

14 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 10(2).

15 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 2(2) (substituted by SI 2003/2457).

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#### **431. Risk assessment in respect of new or expectant mothers; and protective measures.**

Where the persons working in an undertaking include women of child-bearing age<sup>1</sup> and the work is of a kind which could involve risk<sup>2</sup>, by reason of her condition, to the health and safety of a new or expectant mother<sup>3</sup>, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents<sup>4</sup>, the required risk assessment<sup>5</sup> must also include an assessment of such risk<sup>6</sup>.

Where, in the case of an individual employee, the taking of any other action the employer is required to take under the relevant statutory provisions<sup>7</sup> would not avoid the risk referred to above the employer must, if it is reasonable to do so, and would avoid such risks, alter her working conditions or hours of work<sup>8</sup>. If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer must, subject to the statutory right to the offer of alternative work<sup>9</sup>, suspend the employee from work for so long as is necessary to avoid such risk<sup>10</sup>. Nothing in these provisions<sup>11</sup>, however, requires the employer:

341 (1) to take any action in relation to an employee until she has notified the employer in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding<sup>12</sup>;

342 (2) to maintain action taken in relation to an employee:

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115. (a) in a case to which either of these provisions<sup>13</sup> relates and where the employee has notified her employer that she is pregnant, where she has failed, within a reasonable time of being requested to do so in writing by her employer, to produce for the employer's inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant;

116. (b) once the employer knows that she is no longer a new or expectant mother; or

117. (c) if the employer cannot establish whether she remains a new or expectant mother<sup>14</sup>.

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Where a new or expectant mother works at night and a certificate from a registered medical practitioner<sup>15</sup> or a registered midwife<sup>16</sup> shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate, the employer must, subject to the statutory right to the offer of alternative work<sup>17</sup>, suspend her from work for so long as is necessary for her health or safety<sup>18</sup>. Nothing in this provision, however, requires the employer to maintain action taken in relation to an employee once the employer knows that she is no longer a new or expectant mother or if the employer cannot establish whether she remains a new or expectant mother<sup>19</sup>.

The Secretary of State for Defence may not issue an exemption certificate<sup>20</sup> in respect of the above provisions<sup>21</sup>.

A failure to carry out a risk assessment in respect of a pregnant woman, as required by the above provisions, is capable of amounting to unlawful sex discrimination<sup>22</sup>.

1 There is no statutory definition of 'child-bearing age' for these purposes. There is generally no presumption as to the age at which a woman is or is not past childbearing, but for the purposes of the rule against perpetuities where the ability of a person to have a child at a future date is at issue there is a rebuttable presumption that a female can have a child between the ages of 12 and 55: see **CIVIL PROCEDURE** vol 11 (2009) PARA 1102.

2 In the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(1)-(3) (see the text and notes 1, 3-10) references to risk, in relation to risk from any infectious or contagious disease, are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace: reg 16(4). As to the 1999 Regulations and their application see PARA 428.

3 For these purposes, 'new or expectant mother' means an employee who is pregnant, who has given birth within the previous six months or who is breastfeeding; and 'given birth' means delivered a living child or, after 24 weeks of pregnancy, a stillborn child: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2). As to the meaning of 'employee' see PARA 302 note 4.

4 Ie including those specified in Annexes I and II of the directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (EC Council Directive 92/85 (OJ L348, 28.11.1992, p 1), Annexes I, II). As to the protection of women employees see further PARA 453.

5 Ie the assessment required by the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(1): see PARA 429.

6 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(1).

7 As to the relevant statutory provisions see PARA 302 note 24.

8 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(2).

9 Ie subject to the Employment Rights Act 1996 s 67: see **EMPLOYMENT** vol 39 (2009) PARA 319.

10 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(3). An employer's obligation to avoid risks to a pregnant employee is an obligation to reduce risks to their lowest acceptable level, not to avoid all risks completely: *New Southern Railway Ltd v Quinn* [2006] ICR 761, [2006] IRLR 266, EAT.

11 Ie nothing in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(2) or (3): see the text and notes 7-10.

12 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 18(1).

13 Ie the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 16(2) or (3): see the text and notes 7-10.

14 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 18(2)(a)-(c).

15 As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

16 As to registered midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717.

17 See note 9.

18 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 17.

19 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 18(2)(b), (c).

20 Ie under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(1)(a): see PARA 428.

21 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(1)(a); and PARA 428.

22 *Hardman v Mallon (t/a Orchard Lodge Nursing)* [2002] IRLR 516, [2002] All ER (D) 439 (May), EAT; *Bunning v GT Bunning & Sons Ltd* [2003] All ER (D) 195 (Sep), EAT. As to unlawful sex discrimination see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 337 et seq.





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**432. Risk assessment by self-employed persons.**

Every self-employed person<sup>1</sup> must make a suitable and sufficient assessment of:

- 343 (1) the risks to his own health and safety to which he is exposed whilst he is at work; and
- 344 (2) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions<sup>2</sup>. Any such assessment must be reviewed by the self-employed person who made it if:

- 345 (a) there is reason to suspect that it is no longer valid; or
- 346 (b) there has been a significant change in the matters to which it relates;

and where as a result of any such review changes to an assessment are required, the self-employed person concerned must make them<sup>3</sup>.

<sup>1</sup> As to the meaning of 'self-employed person' see PARA 302 note 5.

<sup>2</sup> Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(2). As to the relevant statutory provisions see PARA 302 note 24. As to the 1999 Regulations and their application see PARA 428.

<sup>3</sup> Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(3) (amended by virtue of SI 2003/2457).

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## ***B. HEALTH AND SAFETY ARRANGEMENTS, MEASURES AND PROCEDURES***

### **433. Principles of prevention to be applied.**

Where an employer implements any preventive and protective measures<sup>1</sup> he must do so on the basis of the following principles<sup>2</sup>:

- 347 (1) avoiding risks;
- 348 (2) evaluating the risks which cannot be avoided;
- 349 (3) combating the risks at source;
- 350 (4) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- 351 (5) adapting to technical progress;
- 352 (6) replacing the dangerous by the non-dangerous or the less dangerous;
- 353 (7) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- 354 (8) giving collective protective measures priority over individual protective measures; and
- 355 (9) giving appropriate instructions to employees<sup>3</sup>.

<sup>1</sup> As to the meaning of 'preventive and protective measures' see PARA 430 note 12.

<sup>2</sup> Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 4. As to the 1999 Regulations and their application see PARA 428.

<sup>3</sup> Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 4, Sch 1. Schedule 1 specifies the general principles of prevention set out in EC Council Directive 89/391 (OJ L183, 29.06.1989, p 1) art 6(2). See further PARA 341.

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#### **434. Health and safety arrangements.**

Every employer must make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures<sup>1</sup>. Where the employer employs five or more employees, he must record those arrangements<sup>2</sup>.

Other more specific regulations have related requirements<sup>3</sup>.

1 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 5(1). As to the 1999 Regulations and their application see PARA 428. As to the meaning of 'preventive and protective measures' see PARA 430 note 12.

2 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 5(2).

3 See eg the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7; and PARA 622; the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6; and PARA 643.

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#### **435. Health surveillance.**

Every employer must ensure that his employees<sup>1</sup> are provided with such health surveillance<sup>2</sup> as is appropriate having regard to the risks to their health and safety which are identified by the assessment<sup>3</sup>.

In addition to this general duty, specific provision is made for health surveillance by regulations dealing with particular risks<sup>4</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 There is no statutory definition of 'health surveillance' for these purposes.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 6. As to the meaning of 'assessment' see PARA 430 note 8. As to the 1999 Regulations and their application see PARA 428.

4 See eg the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11; and PARA 624; the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 16; and PARA 736; the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 10; and PARA 744.

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#### 436. Health and safety assistance.

Every employer must<sup>1</sup> appoint one or more competent persons<sup>2</sup> to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions<sup>3</sup>. Where an employer appoints persons in accordance with this requirement he must make arrangements for ensuring adequate co-operation between them<sup>4</sup>.

The employer must ensure:

- 356 (1) that the number of persons so appointed, the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking<sup>5</sup>;
- 357 (2) any person so appointed by him who is not in his employment<sup>6</sup>;
- 69 118. (a) is informed of the factors known by him to affect, or suspected by him of affecting, the health and safety of any other person who may be affected by the conduct of his undertaking; and
- 119. (b) has access to the prescribed information<sup>7</sup>; and
- 70 358 (3) any person so appointed by him is given such information about any person working in his undertaking who is:
- 71 120. (a) employed by him under a fixed-term contract of employment<sup>8</sup>; or
- 121. (b) employed in an employment business<sup>9</sup>,
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as is necessary to enable that person properly to carry out the specified function<sup>10</sup>.

The requirement to appoint such persons does not apply:

- 359 (i) to a self-employed employer<sup>11</sup> who is not in partnership with any other person where he has sufficient training and experience or knowledge and other qualities properly to undertake the required measures himself<sup>12</sup>;
- 360 (ii) to individuals who are employers and who are together carrying on business in partnership where at least one of the individuals concerned has sufficient training and experience or knowledge and other qualities properly to undertake the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions and properly to assist his fellow partners in undertaking the measures they need to take to comply with the requirements and prohibitions imposed upon them by or under those provisions<sup>13</sup>.

Nothing in the relevant statutory provisions operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of a person appointed by him under the above provisions<sup>14</sup>.

1     be subject to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(6), (7): see heads (i)-(ii) in the text.

2     A person is to be regarded as competent for these purposes where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(1): reg 7(5).

3     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(1) (amended by SI 2005/1541). As to the 1999 Regulations and their application see PARA 428. As to the relevant statutory provisions see PARA 302 note 24.

4     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(2).

5     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(3).

6     Where there is a competent person in the employer's employment, that person must be appointed for the purposes of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(1) in preference to a competent person not in his employment: reg 7(8).

7     Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(4)(a). The prescribed information is the information referred to in reg 10: see PARAS 430, 440.

8     For these purposes, 'fixed-term contract of employment' means a contract of employment for a specific term which is fixed in advance or which can be ascertained in advance by reference to some relevant circumstance: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2).

9     For these purposes, 'employment business' means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) which supplies persons (other than seafarers) who are employed in it to work for and under the control of other persons in any capacity: Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 1(2).

10    Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(4)(b). The function referred to is that under reg 7(1).

11    As to the meaning of 'self-employed person' see PARA 302 note 5.

12    Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(6).

13    Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(7).

14    Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21(b). See further PARA 859.

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**437. Procedures for serious and imminent danger and for danger areas.**

Every employer must:

- 361 (1) establish and where necessary give effect to appropriate procedures<sup>1</sup> to be followed in the event of serious and imminent danger to persons at work in his undertaking<sup>2</sup>;
- 362 (2) nominate a sufficient number of competent persons<sup>3</sup> to implement those procedures in so far as they relate to the evacuation from premises of persons at work in his undertaking<sup>4</sup>; and
- 363 (3) ensure that none of his employees<sup>5</sup> has access to any area occupied by him to which it is necessary to restrict access on grounds of health and safety unless the employee concerned has received adequate health and safety instruction<sup>6</sup>.

1 Without prejudice to the generality of the provision set out in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(a) (see head (1) in the text), the procedures there referred to must (1) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it; (2) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and (3) save in exceptional cases for reasons duly substantiated (which cases and reasons must be specified in those procedures), require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger: reg 8(2). As to the 1999 Regulations and their application see PARA 428.

2 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(a).

3 A person is to be regarded as competent for these purposes where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the evacuation procedures referred to in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(b) (see head (2) in the text): reg 8(3).

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(b).

5 As to the meaning of 'employee' see PARA 302 note 4.

6 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(c).



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**438. Contacts with external services.**

Every employer must ensure that any necessary contacts with external services are arranged, particularly as regards first aid, emergency medical care and rescue work<sup>1</sup>.

<sup>1</sup> Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 9. As to the 1999 Regulations and their application see PARA 428.

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#### **439. Co-operation and co-ordination between employers.**

Where two or more employers share a workplace, whether on a temporary or a permanent basis, each such employer must:

- 364 (1) co-operate with the other employers concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions<sup>1</sup>;
- 365 (2) take all reasonable steps, taking into account the nature of his activities, to co-ordinate the measures he takes to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions with the measures the other employers concerned are taking to comply with the requirements and prohibitions imposed upon them by that legislation; and
- 366 (3) take all reasonable steps to inform the other employers concerned of the risks to their employees'<sup>2</sup> health and safety arising out of or in connection with the conduct by him of his undertaking<sup>3</sup>.

The above provisions apply to employers sharing a workplace with self-employed persons<sup>4</sup> and to self-employed persons sharing a workplace with other self-employed persons as they apply to employers sharing a workplace with other employers<sup>5</sup>.

These general duties of co-operation and co-ordination are expanded upon by more specific regulations applying in certain circumstances<sup>6</sup>.

1 As to the relevant statutory provisions see PARA 302 note 24.

2 As to the meaning of 'employees' see PARA 302 note 4.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 11(1) (amended by SI 2005/1541). As to the 1999 Regulations and their application see PARA 428.

4 As to the meaning of 'self-employed person' see PARA 302 note 5.

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 11(2). The references in reg 11(1) to employers and the reference therein to their employees are to be construed accordingly: reg 11(2).

6 See eg the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 5, 6, 24; and PARAS 674, 681; the Ionising Radiations Regulations 1999, SI 1999/3232, reg 15; and PARA 649.

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### ***C. INFORMATION AND TRAINING FOR EMPLOYEES***

#### **440. Information for employees; in general.**

Every employer must provide his employees<sup>1</sup> with comprehensible and relevant information on:

- 367 (1) the risks to their health and safety identified by the assessment<sup>2</sup>;
- 368 (2) the preventive and protective measures<sup>3</sup>;
- 369 (3) the procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking<sup>4</sup>;
- 370 (4) the identity of those persons nominated by him to implement those procedures in so far as they relate to the evacuation of the workplace<sup>5</sup>; and
- 371 (5) the risks notified to him<sup>6</sup> by other employers sharing the workplace<sup>7</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'assessment' see PARA 430 note 8.

3 As to the meaning of 'preventive and protective measures' see PARA 430 note 12.

4 I.e. the procedures referred to in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(a): see PARA 437.

5 I.e. the persons nominated in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(b): see PARA 437.

6 I.e. notified in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 11(1)(c): see PARA 439 head (3).

7 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 10(1) (amended by SI 2005/1541). As to the 1999 Regulations and their application see PARA 428.

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**441. Information for persons working in host employers' or self-employed persons' undertakings.**

Every employer and every self-employed person<sup>1</sup> must ensure that the employer of any employees<sup>2</sup> from an outside undertaking who are working in his undertaking is provided with comprehensible information on:

- 372 (1) the risks to those employees' health and safety arising out of or in connection with the conduct by that first-mentioned employer or by that self-employed person of his undertaking; and
- 373 (2) the measures taken by that first-mentioned employer or by that self-employed person in compliance with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions<sup>3</sup> in so far as those requirements and prohibitions relate to those employees<sup>4</sup>.

Every employer must ensure that any person working in his undertaking who is not his employee, and every self-employed person (not being an employer) must ensure that any person working in his undertaking, is provided with appropriate instructions and comprehensible information regarding any risks to that person's health and safety which arise out of the conduct by that employer or self-employed person of his undertaking<sup>5</sup>.

Every employer must:

- 374 (a) ensure that the employer of any employees from an outside undertaking who are working in his undertaking is provided with sufficient information to enable that second-mentioned employer to identify any person nominated by that first-mentioned employer<sup>6</sup> to implement evacuation procedures as far as those employees are concerned; and
- 375 (b) take all reasonable steps to ensure that any employees from an outside undertaking who are working in his undertaking receive sufficient information to enable them to identify any person nominated by him<sup>7</sup> to implement evacuation procedures as far as they are concerned<sup>8</sup>.

Heads (1) and (2) above apply to a self-employed person who is working in the undertaking of an employer or a self-employed person as they apply to employees from an outside undertaking who are working therein<sup>9</sup>; and heads (a) and (b) above apply to a self-employed person who is working in an employer's undertaking as they apply to employees from an outside undertaking who are working therein<sup>10</sup>.

1 As to the meaning of 'self-employed person' see PARA 302 note 5.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the relevant statutory provisions see PARA 302 note 24.

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(1) (amended by SI 2005/1541). As to the 1999 Regulations and their application see PARA 428.

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(3).

6 le in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 8(1)(b): see PARA 437.

7 See note 6.

8 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(4).

9 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(2) (amended by SI 2005/1541). The reference in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(1) to the employer of any employees from an outside undertaking who are working in the undertaking of an employer or a self-employed person and the references therein to employees from an outside undertaking who are working in the undertaking of an employer or a self-employed person are to be construed accordingly: reg 12(2).

10 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 12(5). The reference in reg 12(4) to the employer of any employees from an outside undertaking who are working in an employer's undertaking and the references therein to employees from an outside undertaking who are working in an employer's undertaking are to be construed accordingly: reg 12(5).

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#### **442. Information for temporary workers.**

Every employer must provide any person whom he has employed under a fixed-term contract of employment<sup>1</sup> with comprehensible information on:

- 376 (1) any special occupational qualifications or skills required to be held by that employee<sup>2</sup> if he is to carry out his work safely; and
- 377 (2) any health surveillance required to be provided to that employee by or under any of the relevant statutory provisions<sup>3</sup>.

He must provide that information before the employee concerned commences his duties<sup>4</sup>.

Every employer and every self-employed person<sup>5</sup> must provide any person employed in an employment business<sup>6</sup> who is to carry out work in his undertaking with comprehensible information on:

- 378 (a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and
- 379 (b) health surveillance required to be provided to that employee by or under any of the relevant statutory provisions<sup>7</sup>.

Every employer and every self-employed person must ensure that every person carrying on an employment business whose employees are to carry out work in his undertaking is provided with comprehensible information on:

- 380 (i) any special occupational qualifications or skills required to be held by those employees if they are to carry out their work safely; and
- 381 (ii) the specific features of the jobs to be filled by those employees (in so far as those features are likely to affect their health and safety)<sup>8</sup>.

The person carrying on the employment business concerned must ensure that the information so provided is given to those employees<sup>9</sup>.

1 As to the meaning of 'fixed-term contract of employment' see PARA 436 note 8.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 15(1)(a), (b). As to the relevant statutory provisions see PARA 302 note 24. As to the 1999 Regulations and their application see PARA 428.

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 15(1).

5 As to the meaning of 'self-employed person' see PARA 302 note 5.

6 As to the meaning of 'employment business' see PARA 436 note 9.

- 7 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 15(2).
- 8 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 15(3)(a), (b).
- 9 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 15(3).

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#### **443. Capabilities and training.**

Every employer must, in entrusting tasks to his employees<sup>1</sup>, take into account their capabilities as regards health and safety<sup>2</sup>.

Every employer must ensure that his employees are provided with adequate health and safety training:

- 382 (1) on their being recruited into the employer's undertaking; and
- 383 (2) on their being exposed to new or increased risks because of:
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- 122. (a) their being transferred or given a change of responsibilities within the employer's undertaking;
- 123. (b) the introduction of new work equipment into, or a change respecting work equipment already in use within, the employer's undertaking;
- 124. (c) the introduction of new technology into the employer's undertaking; or
- 125. (d) the introduction of a new system of work into, or a change respecting a system of work already in use within, the employer's undertaking<sup>3</sup>.
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That training must be repeated periodically where appropriate<sup>4</sup>. It must be adapted to take account of any new or changed risks to the health and safety of the employees concerned<sup>5</sup> and must take place during working hours<sup>6</sup>.

Other more specific regulations have related requirements<sup>7</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(1). As to the 1999 Regulations and their application see PARA 428.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(2).

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(3)(a).

5 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(3)(b).

6 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(3)(c).

7 See eg the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 9; and PARA 487; the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6; and PARA 511; the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9; and PARA 527; the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12; and PARA 625.



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### **(3) FIRST AID**

#### **444. Duties to make provision for first aid.**

An employer<sup>1</sup> must provide, or ensure that there are provided, such equipment and facilities as are adequate and appropriate in the circumstances for enabling first aid<sup>2</sup> to be rendered to his employees<sup>3</sup> if they are injured or become ill at work<sup>4</sup>. He must also provide or ensure that there is provided such number of suitable persons<sup>5</sup> as is adequate and appropriate in the circumstances for rendering first aid to his employees if they are injured or become ill at work<sup>6</sup>. Where, however, a person so provided is absent in temporary and exceptional circumstances it is sufficient compliance with the latter duty if the employer appoints a person, or ensures that a person is appointed, to take charge of the situation relating to an injured or ill employee who will need help from a medical practitioner or nurse, and of the first aid equipment and facilities provided, throughout the period of any such absence<sup>7</sup>. Furthermore, where having regard to the nature of the undertaking, the number of employees at work, and the location of the establishment, it would be adequate and appropriate if instead of a person for rendering first aid there was a person appointed to take charge as described above, then instead of complying with the duty to provide a person for rendering first aid the employer may appoint such a person to take charge, or ensure that such a person is appointed<sup>8</sup>.

Any first aid room provided pursuant to the above requirements must be easily accessible to stretchers and to any other equipment needed to convey patients to and from the room and must be sign-posted<sup>9</sup>.

An employer must inform his employees of the arrangements that have been made in connection with the provision of first aid, including the location of equipment, facilities and personnel<sup>10</sup>.

A self-employed person<sup>11</sup> must provide or ensure that there is provided such equipment, if any, as is adequate and appropriate in the circumstances to enable him to render first aid to himself while he is at work<sup>12</sup>.

The regulations are supported by an approved code of practice which expands significantly on specific first aid requirements over and above the general objectives required by the regulations<sup>13</sup>.

Other specific regulations may impose requirements as to the availability of first aid in prescribed circumstances<sup>14</sup>.

1 In their application to mines not excluded from their scope by the Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 7(e) (see note 4), regs 3, 4 (see the text and notes 2-10) have effect as if the owner of the mine were the employer and as if all persons for the time being employed at the mine were his employees: reg 8 (modified in its application to premises to which the Health and Safety at Work etc Act 1974 applies by SI 1993/1897). For these purposes 'mine' means a mine within the meaning of the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1): Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 2(1).

2 'First aid' means (1) in cases where a person will need help from a medical practitioner or nurse, treatment for the purpose of preserving life and minimising the consequences of injury and illness until such help is obtained; and (2) treatment of minor injuries which would otherwise receive no treatment or which do not need treatment by a medical practitioner or nurse: Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 2(1).

3 As to the meaning of 'employee' see PARA 302 note 4.

4 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(1).

Subject to reg 7, the 1981 regulations apply to and in relation to any premises or activity to or in relation to which the Health and Safety at Work etc Act 1974 ss 1-59 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 7 and 8(1)(a), (c) and (e) (see PARA 305): Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 9; Interpretation Act 1978 s 17(2).

The 1981 regulations do not apply (1) where the Diving at Work Regulations 1997, SI 1997/2776 apply (see PARA 591); (2) where the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, apply (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 630); (3) on vessels which are registered outside the United Kingdom; (4) to a mine of coal, stratified ironstone, shale or fireclay; (5) in respect of the armed forces of the Crown and any force to which any provision of the Visiting Forces Act 1952 applies; or (6) where the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, apply (see PARA 738): Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 7 (amended by SI 1989/1671; SI 1993/1897; and SI 1997/2776); Interpretation Act 1978 s 17(2).

5 For this purpose a person is not suitable unless he has undergone such training and has such qualifications as the Health and Safety Executive approves for the time being in respect of that case or class of case, and such additional training, if any, as may be appropriate in the circumstances of that case: Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(2). As to the Health and Safety Executive see PARA 361 et seq.

6 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(2).

7 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(3).

8 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(4).

9 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(5) (added by SI 2002/2174). The sign must comply with the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4 (see PARA 445) as if it were provided in accordance with that regulation: Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 3(5) (as so added).

10 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 4.

11 As to the meaning of 'self-employed person' see PARA 302 note 5.

12 Health and Safety (First-Aid) Regulations 1981, SI 1981/917, reg 5.

13 As to codes of practice approved by the Health and Safety Executive see PARA 426.

14 See eg the Diving at Work Regulations 1997, SI 1997/2776, reg 6(3); and PARA 592.

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#### **(4) SAFETY SIGNS AND SIGNALS**

##### **445. Employer's duties with regard to safety signs etc.**

If the risk assessment made under the Management of Health and Safety at Work Regulations 1999<sup>1</sup> indicates that the employer concerned, having adopted all appropriate techniques for collective protection, and measures, methods or procedures used in the organisation of work, cannot avoid or adequately reduce risks to employees<sup>2</sup> except by the provision of appropriate safety signs<sup>3</sup> to warn or instruct, or both, of the nature of those risks and the measures to be taken to protect against them, the following provisions apply<sup>4</sup>. The employer must<sup>5</sup>:

- 384 (1) in accordance with the prescribed requirements<sup>6</sup>, provide and maintain any appropriate safety sign<sup>7</sup>, other than a hand signal or verbal communication, or ensure such sign is in place; and
- 385 (2) ensure<sup>8</sup>, so far as is reasonably practicable<sup>9</sup>, that any appropriate hand signal or verbal communication<sup>10</sup> is used; and
- 386 (3) provide and maintain any safety sign provided<sup>11</sup> or ensure such sign is in place<sup>12</sup>.

Heads (1) and (2) above also apply in relation to fire safety signs<sup>13</sup> where they are required to comply with the provisions of any enactment, whether in an Act or instrument<sup>14</sup>.

Where it is appropriate to provide safety signs because at a place of work there is a risk to the health or safety of any employee in connection with the presence or movement of traffic, including pedestrians in relation to such traffic, and there is an appropriate sign in that connection prescribed under the road traffic legislation<sup>15</sup>, that sign must be used whether or not that legislation applies to that place of work<sup>16</sup>.

Every employer must ensure that comprehensible and relevant information on the measures to be taken in connection with safety signs is provided to each of his employees<sup>17</sup> and that each of his employees receives suitable and sufficient instruction and training in the meaning of safety signs and the measures to be taken in connection with safety signs<sup>18</sup>.

The above provisions do not apply:

- 387 (a) to signs used in connection with the supply of any dangerous substance, preparation, product or equipment except to the extent that any enactment, whether in an Act or instrument, which requires such signs makes reference to them;
- 388 (b) to dangerous goods<sup>19</sup> during the course of their transport by road, rail, inland waterway, sea or air;
- 389 (c) except where at a place of work there is a risk to the health or safety of any employee in connection with the presence or movement of traffic<sup>20</sup>, to signs used for regulating road, rail, inland waterway, sea or air traffic; or
- 390 (d) to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of normal ship-board activities of a ship's crew under the direction of the master<sup>21</sup>.

Subject to that, they apply both in and, in certain circumstances, outside Great Britain<sup>22</sup> but do not extend to Northern Ireland<sup>23</sup>.

1     Ie made under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3(1): see PARA 429.

2     For these purposes, risks are only to be treated as having been adequately reduced if, having adopted the appropriate techniques, measures, methods or procedures referred to in the text, there is no longer a significant risk of harm having regard to the magnitude and nature of the risks arising from the work concerned: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(2). As to the meaning of 'employee' see PARA 302 note 4.

3     'Safety sign' means a sign referring to a specific object, activity or situation and providing information or instructions about health or safety at work by means of a signboard, a safety colour, an illuminated sign, an acoustic signal, a verbal communication or a hand signal: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 2(1). 'Signboard' means a sign which provides information or instructions by a combination of geometric shape, colour and a symbol or pictogram and which is rendered visible by lighting of sufficient intensity (and 'symbol or pictogram' means a figure which describes a situation or prescribes behaviour and which is used on a signboard or illuminated surface); 'safety colour' means a colour to which a meaning is assigned; 'illuminated sign' means a sign produced by a device made of transparent or translucent materials which are illuminated from the inside or the rear in such a way as to give the appearance of a luminous surface; 'acoustic signal' means a coded sound signal which is released and transmitted by a device designed for that purpose, without the use of a human or artificial voice; 'verbal communication' means a predetermined spoken message communicated by a human or artificial voice; and 'hand signal' means a movement or position of the arms or hands or a combination thereof, in coded form, for guiding persons who are carrying out manoeuvres which create a risk to the health or safety of persons at work: reg 2(1).

Any reference for these purposes to a sign providing instructions includes a mandatory sign, a prohibition sign and a warning sign: reg 2(2). 'Mandatory sign' means a sign prescribing behaviour; 'prohibition sign' means a sign prohibiting behaviour likely to cause a risk to health or safety; and 'warning sign' means a sign giving a warning of a risk to health or safety: reg 2(1).

4     Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(1) (amended by SI 1999/3242).

5     Ie without prejudice to the requirements as to the signs contained in the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 11(2): see PARA 743.

6     Ie in accordance with the requirements set out in the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pts I-VII. Schedule 1 is not set out in detail in this work. Sch 1 Pt I sets out minimum requirements concerning safety signs and signals at work; Sch 1 Pt II sets out minimum general requirements concerning signboards; Sch 1 Pt III sets out minimum requirements governing signs on containers and pipes; Sch 1 Pt IV sets out minimum requirements for the identification and location of fire-fighting equipment; Sch 1 Pt V sets out minimum requirements governing signs used for obstacles and dangerous locations, and for marking traffic routes; Sch 1 Pt VI sets out minimum requirements for illuminated signs; and Sch 1 Pt VII sets out minimum requirements for acoustic signals.

7     Ie any such sign described in the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pts I-VII: see note 6.

8     Ie subject to the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(5), in accordance with the requirements of Sch 1 Pts I, VIII, IX. Schedule 1 is not set out in detail in this work. Schedule 1 Pt I sets out minimum requirements concerning safety signs and signals at work; Sch 1 Pt VIII sets out minimum requirements for verbal communication and Sch 1 Pt IX sets out minimum requirements for hand signals. For the purposes of reg 4(4)(b) (see head (2) in the text) the appropriate hand signal described in the documents specified in Sch 2 is an alternative to the corresponding hand signal described in Sch 1 Pt IX para 3: reg 4(5). The documents so specified are (1) the standards issued by the British Standards Institution with the following standard numbers: (a) BS 6736: 1986 Hand Signals for Agricultural Operations; (b) BS 7121: 1989 Code of practice for safe use of cranes; (2) Appendix C of the Fire Service Training Manual: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 2.

British Standards (formerly known as the British Standards Institution) was incorporated by Royal Charter in 1929 and pioneered the introduction of safety standards such as the kitemark on goods. British Standards now works closely with the International Organisation for Standardisation ('ISO') and is a member of the European Committee for Standardisation ('CEN') and the Committee for Electrotechnical Standardisation ('CENELEC'). BSI Inspectorate is a global business with the objective of minimising risk through independent inspection, analysis

and testing of commodities, with services extending to 110 countries. At the date at which this title states the law, the BSI Group's internet site was accessible at [www.bsi-global.com](http://www.bsi-global.com) and [www.standardsuk.com](http://www.standardsuk.com).

9 As to what is reasonably practicable see **PARA 417**.

10 *le* any such signal or communication described in the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pts I, VIII, IX: see note 8.

11 *le* provided in pursuance of the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(6): see the text and notes 15-16.

12 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(4).

13 'Fire safety sign' means a sign (including an illuminated sign or an acoustic signal) which (1) provides information on escape routes and emergency exits in case of fire; (2) provides information on the identification or location of fire-fighting equipment; or (3) gives warning in case of fire: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 2(1).

14 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(3), which is stated to be without prejudice to reg 4(1). For transitional provisions see reg 6. Notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 (see **PARAS 370, 372**), the enforcing authority in relation to fire safety signs provided in pursuance of the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(4) as applied by reg 4(3) (signs provided to comply with the provisions of any enactment) is (1) the Health and Safety Executive, in the case of (a) premises where the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (revoked), apply; or (b) premises and activities to which the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, apply by virtue of reg 3(2)(b) (see note 22 head (2)); (2) in any other case, the authority or class of authorities responsible for enforcing the relevant provision of the enactment which applies to the case: reg 7.

15 *le* under the Road Traffic Regulation Act 1984: see **ROAD TRAFFIC**.

16 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(6).

17 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 5(1).

18 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 5(2).

19 'Dangerous goods' has the meaning in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1) (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3)) (see **PARA 555** note 2), which applies as if those goods were being carried by road: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 2(1) (definition substituted by SI 2004/568; and amended by SI 2007/1573).

20 *le* subject to the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 4(6): see the text and notes 15-16.

21 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 3(1).

22 See the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 3(2). The 1996 regulations apply (1) in Great Britain; and (2) to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act (Application Outside Great Britain) Order 2001, SI 2001/2127 (see **PARA 305**), as they apply within Great Britain: Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 3(2); Interpretation Act 1978 s 17(2). As to the meaning of 'Great Britain' see **PARA 305** note 7.

23 Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, reg 3(3).

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## (5) EMPLOYEES' DUTIES

### **446. General duties of employees at work and others under the Health and Safety at Work etc Act 1974.**

It is every employee's<sup>1</sup> duty<sup>2</sup>, while at work<sup>3</sup>, to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work and, as regards any duty or requirement imposed on his employer<sup>4</sup> or any other person by or under any of the relevant statutory provisions<sup>5</sup>, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with<sup>6</sup>.

Any person who intentionally or recklessly interferes with or misuses anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions commits an offence<sup>7</sup>.

Without prejudice to any right of action which exists apart from the provisions of the Health and Safety at Work etc Act 1974, a breach of either provision described in this paragraph<sup>8</sup> confers no right of action in any civil proceeding<sup>9</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 It is an offence for a person to fail to discharge this duty: Health and Safety at Work etc Act 1974 s 33(1) (a); as to the penalty see PARA 853.

3 As to the meanings of 'work' and 'at work' see PARA 302 note 1.

4 As to the general duties of employers to employees and other persons see PARA 420; and **EMPLOYMENT**.

5 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

6 Health and Safety at Work etc Act 1974 s 7.

7 Health and Safety at Work etc Act 1974 ss 8, 33(1)(b). As to the penalty see PARA 853.

8 ie of the Health and Safety at Work etc Act 1974 s 7 or s 8.

9 Health and Safety at Work etc Act 1974 s 47(1)(a), (4).

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**447. Employees' general duties under the Management of Health and Safety at Work Regulations 1999.**

Every employee<sup>1</sup> must use any machinery, equipment, dangerous substance<sup>2</sup>, transport equipment, means of production or safety device provided to him by his employer in accordance both with any training in the use of the equipment concerned which has been received by him and with the instructions respecting that use which have been provided to him by that employer in compliance with the requirements and prohibitions imposed upon that employer by or under the relevant statutory provisions<sup>3</sup>.

Every employee must inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees:

- 391 (1) of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to health and safety; and
- 392 (2) of any matter which a person with the first-mentioned employee's training and instruction would reasonably consider represented a shortcoming in the employer's protection arrangements for health and safety,

in so far as that situation or matter either affects the health and safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this provision<sup>4</sup>.

The Secretary of State for Defence has power to grant a certificate of exemption from the above provisions<sup>5</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'substance' see PARA 302 note 7.

3 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 14(1). As to the relevant statutory provisions see PARA 302 note 24. As to the 1999 Regulations and their application see PARA 428.

4 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 14(2).

5 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 20(1)(b); and PARA 428.

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#### **448. Employees' duties under specific statutory provisions.**

A number of health and safety regulations impose specific duties on employees. Thus, if an employee is working in a part of dock premises where there is a foreseeable risk of injury to the head, he must wear the suitable safety helmet provided by his employer<sup>1</sup>; and if he is working in certain other areas in dock premises he must wear the high-visibility garment provided by his employer<sup>2</sup>. If an employer, in pursuance of his duty to take appropriate steps to reduce a risk of injury to an employee during manual handling operations, provides a system of work for his use, then the employee must make full and proper use of it<sup>3</sup>. Every employee must, as far as is practicable, fully and properly use personal ear protectors when they are provided by his employer, and any other control measures which are provided by his employer in compliance with his statutory duties in respect of noise at work, and must report any defect in them to his employer<sup>4</sup>. Similarly, every employee must make proper use of any personal protective equipment provided to him by his employer, must take all reasonable steps to ensure that it is returned to the accommodation provided for it after use and must forthwith report to his employer any loss or obvious defect in it<sup>5</sup>.

An employee must report forthwith, to his employer or to any other employee of that employer with specific responsibility for the health and safety of his fellow employees, any accident or incident which has or may have resulted in the release of a biological agent which could cause severe human disease<sup>6</sup>.

Every employee must make full and proper use of any control measure, other thing or facility provided in accordance with the regulations relating to the control of lead at work and, where relevant, must take all reasonable steps to ensure it is returned after use to any accommodation provided for it and, if he discovers a defect in it, report it forthwith to his employer<sup>7</sup>.

An employee who is engaged in work with ionising radiation must not knowingly expose himself or any other person to ionising radiation to an extent greater than is reasonably necessary for the purposes of his work, and must exercise reasonable care while carrying out such work<sup>8</sup>. He must use and take care of any personal protective equipment provided for him<sup>9</sup> and may be subject to other specific statutory requirements<sup>10</sup>.

These and other specific duties imposed on employees are discussed in detail in this title in the context in which they arise.

1 See the Docks Regulations 1988, SI 1988/1655, reg 19(2); and PARA 712.

2 See the Docks Regulations 1988, SI 1988/1655, reg 19(3); and PARA 712.

3 See the Manual Handling Operations Regulations 1992, SI 1992/2793, reg 5; and PARA 583.

4 See the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 8(2); and PARA 616.

5 See the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, regs 10(2), (4), 11; and PARAS 528-529.

6 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(5); and PARA 626.



- 7 See the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(9); and PARA 643.
- 8 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(1); and PARA 653.
- 9 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(2); and PARA 653.
- 10 See PARA 653.

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## **(6) EMPLOYEE PARTICIPATION AND CONSULTATION**

### **449. Introduction.**

There are two separate sets of regulations which make general provision for employee health and safety representatives, the Safety Representatives and Safety Committees Regulations 1977<sup>1</sup> which were made under the Health and Safety at Work etc Act 1974<sup>2</sup> and the Health and Safety (Consultation with Employees) Regulations 1996<sup>3</sup> which were made under the European Communities Act 1972<sup>4</sup>. The 1977 regulations apply where employees are represented by an independent trade union which is recognised by the employer<sup>5</sup>; if they are not represented by such a trade union, or if the union is not recognised by the employer, then the 1996 regulations apply<sup>6</sup>. Under the 1977 regulations the health and safety representatives are appointed by the trade union<sup>7</sup> while under the 1996 regulations they are elected by the workforce and if no such representatives have been elected then the employer has a duty to consult with the entire workforce<sup>8</sup>. Under the 1977 regulations there is an additional requirement on the employer to establish a safety committee if requested to do so by two or more safety representatives<sup>9</sup> but there is no corresponding duty under the 1996 regulations. Safety representatives have a right of inspection under the 1977, but not under the 1996, regulations<sup>10</sup>, and there are other differences in the two regimes which are discussed below<sup>11</sup>.

With regard to workers on offshore installations, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989<sup>12</sup> make detailed provision with regard to health and safety representatives and health and safety committees on such installations and these are discussed in a later part of this title<sup>13</sup>.

Separate provision is made with regard to mines and quarries for the appointment of panels of workers' representatives to make health and safety inspections of the workplace<sup>14</sup>. Such an inspection counts as an inspection made under the 1977 regulations<sup>15</sup>.

Safety representatives and members of safety committees have employment protection rights in connection with their functions<sup>16</sup>; and any employee may not be subjected to any detriment on the grounds that:

- 393 (1) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities; or
- 394 (2) he took part, or proposed to take part, in consultation with the employer pursuant to the 1996 regulations or in an election of representatives of employee safety within the meaning of those regulations, whether as a candidate or otherwise;
- 395 (3) being an employee at a place where either there was no such representative or safety committee, or there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;
- 396 (4) in circumstances of danger which the employee reasonable believed to be serious and imminent and which he could not reasonably have been expected to

avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work; or  
 397 (5) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger<sup>17</sup>.

A dismissal on any such grounds is automatically unfair<sup>18</sup>.

1    In the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500: see PARA 450; and **EMPLOYMENT** vol 40 (2009) PARA 1022 et seq. The 1977 regulations are supported by an approved code of practice. As to codes of practice approved by the Health and Safety Executive see PARA 426.

2    As to regulations under the Health and Safety at Work etc Act 1974 see PARAS 424-425.

3    In the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513: see PARA 451; and **EMPLOYMENT** vol 41 (2009) PARA 1170 et seq.

4    The Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, implement the requirements of EC Council Directive 89/391 (OJ L183, 29.6.89, p 1) (the 'framework directive': see PARA 341) with regard to the consultation and participation of workers.

5    See the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, regs 2, 3; and PARA 450.

6    See the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3; and PARA 451.

7    See note 5.

8    See note 6.

9    See the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 9; and PARA 450.

10   See the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, regs 5, 6; and PARA 450.

11   See PARAS 450-451.

12   In the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971: see PARAS 739-742.

13   See PARAS 739-742.

14   See the Mines and Quarries Act 1954 s 123(1); and PARA 383; the Quarries Regulations 1999, SI 1999/2024, reg 40; and PARA 843.

15   Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 5(4) (amended by SI 1999/2024).

16   An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that being a representative of workers on matters of health and safety at work or member of a safety committee (1) in accordance with arrangements established under or by virtue of any enactment; or (2) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) functions as such a representative or a member of such committee: Employment Rights Act 1996 s 44(1)(b). Section 44 does not apply where the detriment in question amounts to dismissal (within the meaning of Pt X (ss 94-134A) (see **EMPLOYMENT** vol 40 (2009) PARA 714 et seq): s 44(4) (amended by the Employment Relations Act 1999 ss 18(1), (2)(a), 44, Sch 9, Table 3). As to unfair dismissal on health and safety grounds see the text and note 18.

17   Employment Rights Act 1996 s 44(1)(a), (ba)-(e) (s 44(ba) added by SI 1996/1513). For the purposes of the Employment Rights Act 1996 s 44(1)(e) (see head (5) in the text), whether steps which the employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time: s 44(2). An employee is not, however, to be regarded as having been subjected to a detriment on the ground specified in s 44(1)(e) if the

employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did: s 44(3). See further **EMPLOYMENT** vol 39 (2009) PARA 544. On its proper construction, s 44 does not apply where an alleged detriment (eg the provision of an unsatisfactory reference) is inflicted and suffered after an employee has ceased to be employed: *Fadipe v Reed Nursing Personnel* [2001] EWCA Civ 1885, [2005] ICR 1760, [2001] All ER (D) 23 (Dec).

The steps described in head (5) above may be taken to protect persons who are not employees: see *Von Goetz v St George's Healthcare NHS Trust* [2001] All ER (D) 478 (Oct), EAT.

18 See the Employment Rights Act 1996 s 100 (amended by SI 1996/1513); and **EMPLOYMENT** vol 40 (2009) PARA 742. The dismissal is not unfair if it is unconnected with the health and safety issues which have arisen: see eg *Dunn v Ovalcode Ltd (t/a UKR)* [2003] All ER (D) 241 (Apr), EAT. The protection does not entitle an employee to the benefit of positive discrimination in a situation where employees are being selected for redundancy: *Shipham & Co Ltd v Skinner* [2001] All ER (D) 201 (Dec), EAT.

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#### **450. The Safety Representatives and Safety Committees Regulations 1977.**

A recognised trade union<sup>1</sup> may appoint safety representatives from amongst the employees<sup>2</sup> in all cases where one or more employees are employed by an employer by whom it is recognised<sup>3</sup>. Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons so appointed as safety representatives and the group or groups of employees they represent, each such safety representative has the following functions<sup>4</sup>:

- 398 (1) to investigate potential hazards and dangerous occurrences at the workplace, whether or not they are drawn to his attention by the employees he represents, and to examine the causes of accidents at the workplace;
- 399 (2) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work<sup>5</sup>;
- 400 (3) to make representations to the employer on matters arising out of heads (1) and (2) above;
- 401 (4) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;
- 402 (5) to carry out inspections<sup>6</sup>;
- 403 (6) to represent the employees he was appointed to represent in consultations at the workplace with inspectors<sup>7</sup> of the Health and Safety Executive<sup>8</sup> and of any other enforcing authority<sup>9</sup>;
- 404 (7) to receive information from inspectors<sup>10</sup>;
- 405 (8) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions<sup>11</sup>.

Every employer must consult safety representatives in good time with regard to the specified matters<sup>12</sup>.

For the performance of their statutory functions<sup>13</sup>, safety representatives are entitled, if they have given the employer reasonable notice, to inspect and take copies of any document relevant to the workplace or to the employees whom the safety representatives represent which the employer is required to keep by virtue of any relevant statutory provision except a document consisting of or relating to any health record of an identifiable individual<sup>14</sup>. Subject to the prescribed exceptions<sup>15</sup>, an employer must make available to safety representatives the information, within the employer's knowledge, necessary to enable them to fulfil their functions<sup>16</sup>.

In any case in which at least two safety representatives request the employer in writing to establish a safety committee<sup>17</sup>, he must establish it in accordance with the following provisions:

- 406 (a) he must consult with the safety representatives who made the request and with the representatives of recognised trade unions whose members work in any workplace in respect of which he proposes that the committee should function;
- 407 (b) the employer must post a notice stating the composition of the committee and the workplace or workplaces to be covered by it in a place where it may be easily read by the employees;

408 (c) the committee must be established not later than three months after the request for it<sup>18</sup>.

The Health and Safety Executive has power to grant exemptions from any of the above requirements<sup>19</sup>.

1 For these purposes, 'recognised trade union' means an independent trade union as defined in the Trade Union and Labour Relations (Consolidation) Act 1992 s 5 (see **EMPLOYMENT** vol 40 (2009) PARA 859) which the employer concerned recognises for the purpose of negotiations relating to or connected with one or more of the matters specified in s 178(1), (2) (collective agreements and collective bargaining: see **EMPLOYMENT** vol 41 (2009) PARA 1042) in relation to persons employed by him: Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1), (2) (reg 2(1) amended by virtue of SI 2006/594); Trade Union and Labour Relations (Consolidation) Act 1992 s 300(3), Sch 3 para 1(4).

2 As to the meaning of 'employee' see PARA 302 note 4.

3 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 3(1) (amended by SI 1996/1513). A person so appointed as a safety representative must so far as is reasonably practicable either have been employed by his employer throughout the preceding two years or have had at least two years' experience in similar employment: Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 3(4). As to what is reasonably practicable see PARA 417. For prescribed cases in which such safety representatives need not be employees of the employer concerned see reg 8. Subject to that, a person ceases to be a safety representative for these purposes when (1) the trade union which appointed him notifies the employer in writing that his appointment has been terminated; or (2) he ceases to be employed at the workplace but if he was appointed to represent employees at more than one workplace he does not cease by virtue of this provision to be a safety representative so long as he continues to be employed at any one of them; or (3) he resigns: reg 3(3). For these purposes, 'workplace' in relation to a safety representative means any place or places where the group or groups of employees he is appointed to represent are likely to work or which they are likely to frequent in the course of their employment or incidentally to it: reg 2(1).

4 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, regs 3(2), 4(1). These are in addition to his function under the Health and Safety at Work etc Act 1974 s 2(4) to represent the employees in consultations with the employer under s 2(6) (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures: see PARA 421): Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(1). However, without prejudice to the Health and Safety at Work etc Act 1974 ss 7, 8 (general duties of employees at work etc: see PARA 446), no function given to a safety representative by the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(1) is to be construed as imposing any duty on him: reg 4(1).

5 For these purposes, 'welfare at work' means those aspects of welfare at work which are the subject of health and safety regulations or of any of the existing statutory provisions within the meaning of the Health and Safety at Work etc Act 1974 s 53(1) (see PARA 302 note 12): Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 2(1).

6 In accordance with the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, regs 5, 6. Safety representatives are entitled to inspect the workplace or a part of it if they have given the employer or his representative reasonable notice in writing of their intention to do so and have not inspected it, or that part of it, as the case may be, in the previous three months; and may carry out more frequent inspections by agreement with the employer: reg 5(1). Where there has been a substantial change in the conditions of work (whether because of the introduction of new machinery or otherwise) or new information has been published by the Health and Safety Executive relevant to the hazards of the workplace since the last such inspection, the safety representatives after consultation with the employer are entitled to carry out a further inspection of the part of the workplace concerned notwithstanding that three months have not elapsed since the last inspection: reg 5(2) (amended by SI 2008/960). The employer must provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out an inspection under the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 5, but nothing in reg 5 precludes the employer or his representative from being present in the workplace during the inspection: reg 5(3). As to inspections of mines and quarries see reg 5(4); and PARA 449.

Where there has been a notifiable accident or dangerous occurrence in a workplace or a notifiable disease has been contracted there and (1) it is safe for an inspection to be carried out; and (2) the interests of employees in the group or groups which safety representatives are appointed to represent might be involved, those safety representatives may carry out an inspection of the part of the workplace concerned and so far as is necessary

for the purpose of determining the cause they may inspect any other part of the workplace; where it is reasonably practicable to do so they must notify the employer or his representative of their intention to carry out the inspection: reg 6(1). The employer must provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out such an inspection; but nothing in reg 6(2) precludes the employer or his representative from being present in the workplace during the inspection: reg 6(2). For these purposes, 'notifiable accident or dangerous occurrence' and 'notifiable disease' mean any accident, dangerous occurrence or disease, as the case may be, notice of which is required to be given by virtue of any of the relevant statutory provisions: reg 6(3). As to such accidents, occurrences and diseases see PARA 399 et seq; and as to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

The 1977 regulations are not to be construed as giving any person a right to inspect any place, article, substance or document which is the subject of restrictions on the grounds of national security unless he satisfies any test or requirement imposed on those grounds by or on behalf of the Crown: reg 2(3).

7 As to the meaning of 'inspector' see PARA 375 note 2.

8 As to the Health and Safety Executive see PARA 361 et seq.

9 As to the meaning of 'enforcing authority' see PARA 352 note 2.

10 In accordance with the Health and Safety at Work etc Act 1974 s 28(8): see PARA 382.

11 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(1). An employer must permit a safety representative to take such time off with pay during the employee's working hours as may be necessary for the purposes of (1) performing his functions under the Health and Safety at Work etc Act 1974 2(4) and the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(1)(a)-(h) (see heads (1)-(8) in the text); (2) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 16 (see PARA 426); Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(2) (amended by SI 2008/960). As to the meaning of 'with pay' see the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4(2), Sch 2 (amended and renumbered respectively by SI 1999/860); and **EMPLOYMENT** vol 40 (2009) PARA 1023.

As to a safety representative's right to complain to an industrial tribunal where the employer has failed to permit him to take time off, or failed to pay him, see the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 11 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)); and **EMPLOYMENT** vol 40 (2009) PARA 1023.

12 See the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4A (added by SI 1992/2051; and amended by SI 1999/3242 and SI 2005/1541). The specified matters are (1) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent; (2) his arrangements for appointing or, as the case may be, nominating persons in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 7(1), 8(1)(b) (see PARAS 436-437) or the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(3)(b) (see PARA 660; and **FIRE SERVICES**); (3) any health and safety information he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions; (4) the planning and organisation of any health and safety training he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions; and (5) the health and safety consequences for the employees the safety representatives concerned represent of the introduction (including the planning thereof) of new technologies into the workplace: see the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4A(1) (as so added and amended).

Without prejudice to regs 5, 6 (see note 6), every employer must provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions under the Health and Safety at Work etc Act 1974 s 2(4) and under the 1977 regulations: Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4A(2) (as so added).

13 In under the Health and Safety at Work etc Act 1974 s 2(4) and under the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500.

14 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 7(1).

15 In except (1) any information the disclosure of which would be against the interests of national security; or (2) any information which he could not disclose without contravening a prohibition imposed by or under an enactment; or (3) any information relating specifically to an individual, unless he has consented to its being disclosed; or (4) any information the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to the employer's undertaking or, where the information was

supplied to him by some other person, to the undertaking of that other person; or (5) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings: Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 7(2).

16 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 7(2). This does not, however, require an employer to produce or allow inspection of any document or part of a document which is not related to health, safety or welfare: reg 7(3).

17 He under the Health and Safety at Work etc Act 1974 s 2(7): see PARA 421.

18 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 9(1), (2).

19 Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 10 (amended by SI 2008/960). Any such exemption may be unconditional or subject to such conditions as the Executive may impose and may be with or without a limit of time: Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 10 (amended by virtue of SI 2008/960).



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#### **451. The Health and Safety (Consultation with Employees) Regulations 1996.**

Where there are employees<sup>1</sup> who are not represented by safety representatives under the Safety Representatives and Safety Committees Regulations 1977<sup>2</sup>, the employer must consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to:

- 409 (1) the introduction of any measure at the workplace<sup>3</sup> which may substantially affect the health and safety of those employees;
- 410 (2) his arrangements for appointing or, as the case may be, nominating persons to give health and safety assistance to him<sup>4</sup>;
- 411 (3) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions<sup>5</sup>;
- 412 (4) the planning and organisation of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and
- 413 (5) the health and safety consequences for those employees of the introduction<sup>6</sup> of new technologies into the workplace<sup>7</sup>.

The consultation so required is consultation either with the employees directly or, in respect of any group of employees, with one or more persons in that group who were elected, by the employees in that group at the time of the election, to represent that group for the purposes of such consultation (and any such persons are referred to as 'representatives of employee safety')<sup>8</sup>. Where an employer consults representatives of employee safety he must inform the employees represented by those representatives of the names of those representatives and of the group of employees represented by them<sup>9</sup>. An employer may not consult a person as a representative of employee safety if:

- 414 (a) that person has notified the employer that he does not intend to represent the group of employees for the purposes of such consultation;
- 415 (b) that person has ceased to be employed in the group of employees which he represents;
- 416 (c) the period for which that person was elected has expired without that person being re-elected; or
- 417 (d) that person has become incapacitated from carrying out his functions under the Health and Safety (Consultation with Employees) Regulations 1996<sup>10</sup>;

and where pursuant to heads (a) to (d) above an employer discontinues consultation with that person he must inform the employees in the group concerned of that fact<sup>11</sup>.

Where an employer who has been consulting representatives of employee safety decides to consult employees directly he must inform the employees and the representatives of that fact<sup>12</sup>.

Where an employer consults employees directly he must, subject to the prescribed exceptions<sup>13</sup>, make available to those employees such information, within the employer's knowledge, as is necessary to enable them to participate fully and effectively in the consultation<sup>14</sup>; and where an employer consults representatives of employee safety he must,

subject to those exceptions, make available to those representatives such information, within the employer's knowledge, as is:

- 418 (i) necessary to enable them to participate fully and effectively in the consultation and in the carrying out of their functions under the 1996 regulations;
- 419 (ii) contained in any record which he is required to keep by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995<sup>15</sup> and which relates to the workplace or the group of employees represented by those representatives<sup>16</sup>.

Where an employer consults representatives of employee safety each of those representatives has, for the period for which that representative is so consulted, the following functions:

- 420 (A) to make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, the group of employees he represents;
- 421 (B) to make representations to the employer on general matters affecting the health and safety at work of the group of employees he represents and, in particular, on such matters as he is consulted about by the employer<sup>17</sup>; and
- 422 (C) to represent the group of employees he represents in consultations at the workplace with inspectors<sup>18</sup> appointed under the Health and Safety at Work etc Act 1974<sup>19</sup>.

Where an employer consults representatives of employee safety, he must ensure that each of those representatives is provided with such training in respect of that representative's functions under the 1996 regulations as is reasonable in all the circumstances and the employer must meet any reasonable costs associated with such training including travel and subsistence costs<sup>20</sup>. He must also permit each of those representatives to take such time off with pay during that representative's working hours as is necessary for the purpose of that representative performing his functions under those regulations or undergoing any training pursuant to the above provision<sup>21</sup>. An employer must permit a candidate standing for election as a representative of employee safety reasonable time off with pay during that person's working hours in order to perform his functions as such a candidate<sup>22</sup>; and must provide such other facilities and assistance as a representative of employee safety may reasonably require for the purpose of carrying out his functions under the 1996 regulations<sup>23</sup>.

Breach of a duty imposed by the 1996 regulations does not<sup>24</sup> confer any right of action in any civil proceedings<sup>25</sup>.

The Health and Safety Executive has issued detailed guidance on the 1996 regulations<sup>26</sup>.

1 For these purposes 'employee' has the meaning assigned to it by the Health and Safety at Work etc Act 1974 s 53(1) (see PARA 302 note 4) but does not include a person employed as a domestic servant in a private household; and 'employer' is to be construed accordingly: Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 2(1). The 1996 regulations do not apply to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew under the direction of the master: reg 12.

Subject to the following provision, the Health and Safety at Work etc Act 1974 s 48 (see PARA 304) applies in respect of the 1996 regulations as it applies in respect of regulations made under the Health and Safety at Work etc Act 1974 Pt I (ss 1-54); but they apply in respect of members of the armed forces of the Crown subject to the following: (1) references to 'representatives of employee safety' (in the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(1)(b) and elsewhere) are, in respect of any group of employees, references to one or more persons in that group who were appointed by the employer to represent that group for the purposes of such consultation; (2) references to 'elected' and 're-elected' in reg 4(3)(c) are, respectively, references to 'appointed' and 're-appointed'; and (3) the provisions of reg 7(1)(b), (2) and (3) do not apply: reg 11(1), (2).

2 Under the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500: see PARA 450.

3 'Workplace' means, in relation to an employee, any place or places where that employee is likely to work or which he is likely to frequent in the course of his employment or incidentally to it and, in relation to a representative of employee safety, any place or places where the employees he represents are likely so to work or frequent: Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 2(1).

4 le in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 7(1), 8(1)(b) (see PARAS 436-437) or the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(3)(b) (see PARA 660; and **FIRE SERVICES**): Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3(b) (amended by SI 1997/1840; SI 1999/3242; and SI 2005/1541).

5 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

6 le including the planning thereof: Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3(e).

7 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3(a)-(e) (as amended: see note 4).

8 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(1).

9 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(2).

10 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(3)(a)-(d).

11 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(3).

12 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 4(4).

13 le subject to the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 5(3). Nothing in reg 5(1) or (2) requires an employer to make available any information (1) the disclosure of which would be against the interests of national security; (2) which he could not disclose without contravening a prohibition imposed by or under any enactment; (3) relating specifically to an individual, unless he has consented to its being disclosed; (4) the disclosure of which would, for reasons other than its effect on health or safety, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or (5) obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings; or to provide or allow the inspection of any document or part of a document which is not related to health or safety: reg 5(3).

14 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 5(1).

15 le the record required to be kept under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 7: see PARA 411.

16 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 5(2).

17 le under the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3: see the text and notes 1-7.

18 le with inspectors appointed under the Health and Safety at Work etc Act 1974 s 19(1): see PARA 375.

19 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 6.

20 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 7(1)(a).

21 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 7(1)(b).

22 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 7(2). As to pay for time off see reg 7(3), Sch 1; and as to a representative of employee safety's right to complain to an employment tribunal if the employer does not allow him time off or pay him for it see reg 7(3), Sch 2 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)); and **EMPLOYMENT** vol 41 (2009) PARA 1178.

23 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 7(4).

24 le subject to the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 7(3), Sch 2.

25 Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 9.

26 See *A Guide to the Health and Safety (Consultation with Employees) Regulations 1996* (L95, HSE Books). As to the status of such guidance see PARA 371; and as to the Health and Safety Executive see PARA 361 et seq.

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## **(7) GENERAL RESTRICTIONS ON EMPLOYMENT FOR HEALTH AND SAFETY REASONS**

### **452. Working time.**

European Union law imposes restrictions on the overall working hours of employees in the interests of health and safety<sup>1</sup>. These requirements, and the regulations implementing them in domestic law<sup>2</sup>, are discussed in detail elsewhere in this work<sup>3</sup>.

1 See European Parliament and EC Council Directive 2003/88 (OJ L299, 18.11.2003, p 9) concerning certain aspects of the organisation of working time (the 'working time directive'); EC Council Directive 79/2000 (OJ L302, 1.12.2000, p 56) concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines, the European Transport Workers' Federation, the European Cockpit Association, the European Regions Airline Association and the International Air Carrier Association; and European Parliament and EC Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) concerning the organisation of the working time of persons performing mobile road transport activities.

2 See (1) the Working Time Regulations 1998, SI 1998/1833; the Civil Aviation (Working Time) Regulations 2004, SI 2004/756; and **AIR LAW** vol 2 (2008) PARA 467 et seq; (2) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 625; (3) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 626; and (4) the Road Transport (Working Time) Regulations 2005, SI 2005/639; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1398 et seq.

3 See **EMPLOYMENT** vol 39 (2009) PARA 243 et seq.

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### 453. Employment of women.

Despite the enactment of equal opportunities legislation<sup>1</sup> and the removal of many former restrictions on women's employment in mines and in certain other industries<sup>2</sup>, some restrictions on the employment of women remain and new protections have been introduced in order to implement the provisions of the EC Council directive on measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding<sup>3</sup>. The relevant restrictions and protections are as follows:

- 423 (1) under the Maternity and Parental Leave Regulations 1999<sup>4</sup>, a compulsory maternity leave period<sup>5</sup> applies in relation to an employee who is entitled to ordinary maternity leave in respect of the period of two weeks which commences with the day on which childbirth occurs<sup>6</sup>;
- 424 (2) a woman is not to be employed in a factory within four weeks after she has given birth<sup>7</sup>;
- 425 (3) under the Management of Health and Safety at Work Regulations 1999, an additional risk assessment must be carried out in certain circumstances in respect of new or expectant mothers<sup>8</sup>;
- 426 (4) a woman of reproductive capacity is prohibited from being employed in certain processes and activities involving lead and lead products<sup>9</sup>;
- 427 (5) the prescribed dose limits for exposure to ionising radiation are set at a lower limit for women of reproductive capacity and for pregnant or breastfeeding women than they are for the workforce generally<sup>10</sup>;
- 428 (6) in the case of a woman member of the flight crew of a civil aircraft, the medical certificate necessary for acting as a member of the flight crew is deemed to be suspended upon the confirmation of her pregnancy; the suspension may be lifted by the Civil Aviation Authority ('CAA') for such period and subject to such conditions as it thinks fit and it ceases when the woman is medically examined under arrangements made by the CAA after the pregnancy has ended and she is pronounced fit to resume her functions as a member of the flight crew<sup>11</sup>.

It is not unlawful discrimination for the employer to act in accordance with such protective provisions<sup>12</sup>.

A pregnant employee has a statutory right to time off work to receive ante-natal care<sup>13</sup>. Employment protection rights with regard to maternity leave are discussed elsewhere in this work<sup>14</sup>.

1 As to unlawful discrimination on grounds of sex see the Sex Discrimination Act 1976; the Sex Discrimination Act 1985; the Equal Pay Act 1970; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 337 et seq.

2 Eg the Baking Industry (Hours of Work) Act 1954 was repealed by the Sex Discrimination Act 1985 s 8 and various provisions restricting the employment of women formerly contained in the Mines and Quarries Act 1954 and the Factories Act 1961 were repealed by the Sex Discrimination Act 1985 s 9, Schedule; numerous former restrictions were removed by the Employment Act 1989 ss 4-9, Schs 1, 2.

3 See EC Council Directive 92/85 (OJ L348, 28.11.1992, p 1) to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (amended by European Parliament and EC Council Directive 2007/30 (OJ L165, 27.6.2007, p 21)).

4 See the Maternity and Parental Leave Regulations 1999, SI 1999/3312: see **EMPLOYMENT** vol 39 (2009) PARA 322 et seq.

5 See a period during which the employer is prohibited, under the Employment Rights Act 1996 s 72, from allowing the employee to work.

6 See the Maternity and Parental Leave etc Regulations 1999, SI 1999/3312, reg 8; and **EMPLOYMENT** vol 39 (2009) PARA 330.

7 See the Public Health Act 1936 s 205; and PARA 846.

8 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 16-18; and PARA 431. Failure to carry out such an assessment may amount to unlawful sex discrimination: see eg *Bunning v GT Bunning & Sons Ltd* [2003] All ER (D) 195 (Sep), EAT.

9 See the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 4(2), Sch 1; and PARA 641.

10 See the Ionising Radiations Regulations 1999, SI 1999/3232, regs 8, 11, Sch 4; and PARA 648.

11 See the Air Navigation Order 2005, SI 2005/1970, art 32B (added by SI 2007/3467); and **AIR LAW** vol 2 (2008) PARA 451. As to suspension from work on medical grounds see generally PARA 455.

12 See the Employment Act 1989 s 4; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 401. Quære whether the common law duty of care owed by an employer which requires him to take account of any particular susceptibilities of an employee (see PARA 412) would preclude him from requiring a pregnant employee to undertake certain tasks.

13 See the Employment Rights Act 1996 s 55; and **EMPLOYMENT** vol 39 (2009) PARA 307.

14 See **EMPLOYMENT** vol 39 (2009) PARA 323 et seq.

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#### **454. Employment of children and young persons.**

There are number of statutory restrictions on the employment of children and young persons. Thus, under the Children and Young Persons Act 1933, in general no child may be employed so long as he is under the age of 14 years and both the types of work he may do and the hours he may work are restricted<sup>1</sup>. These general restrictions, and particular restrictions applying to employment in entertainments and employment abroad, are discussed elsewhere in this work<sup>2</sup>.

An additional risk assessment must be made under the Management of Health and Safety at Work Regulations 1999 with regard to the employment of a young person and those regulations impose additional duties on an employer in respect of such employment<sup>3</sup>. Particular restrictions apply with regard to the employment of young persons in factories<sup>4</sup> and in shipyards<sup>5</sup>. A young person is prohibited from being employed in certain processes and activities involving lead and lead products<sup>6</sup> and the prescribed dose limits for exposure to ionising radiation are set at a lower limit for persons under the age of 18 than they are for the workforce generally<sup>7</sup>.

<sup>1</sup> See the Children and Young Persons Act 1933 s 18; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 746.

<sup>2</sup> See **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 746 et seq.

<sup>3</sup> See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 19; and PARA 430.

<sup>4</sup> See PARAS 846-847.

<sup>5</sup> See PARA 719.

<sup>6</sup> See the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 4(2), Sch 1; and PARA 641.

<sup>7</sup> See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 11, Sch 4; and PARA 648.

Under the employer's common law duty of care, he is required to have regard to the particular susceptibilities of individual employees, and this will include, inter alia, relative inexperience: see further PARA 412.



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#### **455. Suspension from work on medical grounds.**

Various health and safety regulations provide for an employee's suspension from work on medical grounds, for example where that employee's blood-lead concentration has reached a prescribed level<sup>1</sup>; where he has received an overexposure to ionising radiation<sup>2</sup>; or where he is under medical surveillance and has been advised not to undertake work which exposes him to a substance hazardous to health<sup>3</sup>. Suspension from work on medical grounds may also be the result of a recommendation to that effect in an approved code of practice<sup>4</sup>.

In such circumstances the employee is entitled to remuneration from his employer for a period not exceeding 26 weeks<sup>5</sup>.

At common law, a contract of employment may be frustrated through a serious illness or accident which befalls the employee<sup>6</sup>. Short of that, it is possible for a dismissal on the grounds of ill health to be fair if an employee is incapable of performing work of the kind which he was employed to do by the employer, if the dismissal is reasonable in all the circumstances and provided a correct procedure is followed<sup>7</sup>.

1 See the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10; and PARA 644.

2 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 24; and PARA 651.

3 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11; and PARA 624.

4 As to codes of practice approved by the Health and Safety Executive see PARA 426.

5 See the Employment Rights Act 1996 s 64; and **EMPLOYMENT** vol 39 (2009) PARAS 316-317.

6 See **EMPLOYMENT** vol 40 (2009) PARA 686.

7 See **EMPLOYMENT** vol 40 (2009) PARAS 730-731. Allegations that an employer is responsible for the illness of an employee should be considered when assessing whether a compensatory award for unfair dismissal is just and equitable: *Edwards v Governors of Hanson School* [2001] IRLR 733, [2001] All ER (D) 05 (Jan), EAT. As to an employer's duty to dismiss an employee for his own good to protect him from physical danger caused by ill health see *Coxall v Goodyear Great Britain Ltd* [2002] EWCA Civ 1010, [2003] 1 WLR 536, [2003] ICR 152, [2002] All ER (D) 303 (Jul). Cf *Hatton v Sutherland*, *Barber v Somerset County Council*, *Jones v Sandwell Metropolitan Borough Council*, *Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76 at [26]-[29], [31]-[36], [39], [42], [2002] 2 All ER 1 at [26]-[29], [31]-[36], [39], [42], [2002] ICR 613 at [26]-[29], [31]-[36], [39], [42] (discussing the steps which an employer may be under a duty to take to protect an employee from work-related stress, where it is stated, inter alia, that if the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job); revsd without affecting this practical guidance sub nom *Barber v Somerset County Council* [2004] UKHL 13, [2004] 2 All ER 385, [2004] 1 WLR 1089; and see PARA 414.

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## **4. WORKPLACES AND EQUIPMENT**

### **(1) SAFETY OF WORKPLACES**

#### **(i) Provisions of General Application**

##### **456. Application of the Workplace (Health, Safety and Welfare) Regulations 1992.**

On 1 January 1996 all workplaces, whenever first used, became subject to the Workplace (Health, Safety and Welfare) Regulations 1992<sup>1</sup>. For the purposes of the 1992 regulations, 'workplace' means<sup>2</sup> any premises<sup>3</sup> or part of premises which are not domestic premises<sup>4</sup> and are made available to any person as a place of work, and includes:

- 429 (1) any place within the premises to which such person has access while at work;  
and
- 430 (2) any room, lobby, corridor, staircase, road or other place used as a means of access to or egress from that place of work or where facilities are provided for use in connection with the place of work other than a public road<sup>5</sup>.

Some minor provisions of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 relating to health and safety at the workplace still remain in force<sup>6</sup>.

The 1992 regulations are stated to apply to every workplace<sup>7</sup> but there are a number of exceptions to this principle. Thus the 1992 regulations do not apply to:

- 431 (a) a workplace which is or is in or on a ship<sup>8</sup>;
- 432 (b) a workplace which is a construction site<sup>9</sup> and where the only activity being undertaken is construction work<sup>10</sup>, subject to certain exceptions<sup>11</sup>; or
- 433 (c) a workplace located below ground at a mine<sup>12</sup>.

Further, there are modifications or exceptions in the case of:

- 434 (i) temporary work sites<sup>13</sup>;
- 435 (ii) any workplace which is or is in or on an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicles Excise and Registration Act 1994 or a vehicle exempted from duty under that Act<sup>14</sup>;
- 436 (iii) any workplace which is in fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings<sup>15</sup>;
- 437 (iv) any workplace which is at a quarry or above ground at a mine<sup>16</sup>.

Exemption from the requirements of the 1992 regulations may be conferred by the Secretary of State for Defence, in the interests of national security, by a certificate in writing so as to exempt any of the home forces<sup>17</sup>, any visiting force<sup>18</sup>, or any headquarters<sup>19</sup>. Any exemption

may be granted subject to conditions, and to a limit of time, and may be revoked by the Secretary of State by a further certificate in writing at any time<sup>20</sup>.

The regulations are supported by an approved code of practice<sup>21</sup>.

The 1992 regulations do not impose duties in relation to members of the public<sup>22</sup>.

1 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 1(3). Between 1 January 1993 and 31 December 1995, regs 5-27, Schs 1, 2 applied only in respect of 'new' workplaces or modifications, extensions or conversions of existing workplaces: see reg 1(2), (3). For these purposes, any reference, except in reg 2(1) (definitions), to a modification, an extension or a conversion is a reference, as the case may be, to a modification, an extension or a conversion of a workplace started after 31 December 1992: reg 2(2).

2 Ie subject to the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(2): see note 1.

3 As to the meaning of 'premises' see PARA 302 note 6.

4 As to the meaning of 'domestic premises' see PARA 302 note 6.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (definition amended by SI 2002/2174). See also *Parker v PFC Flooring Supplies Ltd* [2001] PIQR P115 (warehouse, including roof, was 'workplace'); *Irvine v Metropolitan Police Comr* [2004] EWHC 1536 (QB), [2004] All ER (D) 79 (May) (workplace included carpet on a staircase). For these purposes, 'public road' means (in England and Wales) a highway maintainable at public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1).

6 See PARAS 328, 481.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(1).

8 Ie within the meaning assigned to that word by the Docks Regulations 1988, SI 1988/1655, reg 2(1): see PARA 706 note 3.

9 Ie within the meaning assigned to that phrase by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1): see PARA 674 note 11.

10 Ie within the meaning assigned to that phrase by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1): see PARA 674.

11 Ie except that the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, regs 18, 25A (see PARAS 472, 458) apply to such a workplace, and regs 7(1A), 12, 14, 15, 16, 18, 19, 26(1) (see PARAS 462, 467, 469, 470, 472, 473 and text and notes 17-19) apply to such a workplace which is indoors.

12 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(1) (amended by SI 1995/2036 and SI 2007/320). For these purposes, 'mine' means a mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (definition added by SI 1995/2036).

13 In their application to temporary work sites, any requirement to ensure that a workplace complies with any of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, regs 20-25 (see PARAS 474-478) has effect as a requirement to so ensure so far as is reasonably practicable: reg 3(2). As to the meaning of 'reasonably practicable' see PARA 417.

14 As respects any workplace which is or is in or on an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicles Excise and Registration Act 1994 or a vehicle exempted from duty under that Act: (1) the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, regs 5-12, 14-25 (see PARAS 459-467, 469-478) do not apply to any such workplace; and (2) reg 13 (see PARA 468) applies to any such workplace only when the aircraft, locomotive or rolling stock, trailer or semi-trailer or vehicle is stationary inside a workplace and, in the case of a vehicle for which a licence is in force under the Vehicles Excise and Registration Act 1994, is not on a public road: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 3(3); Interpretation Act 1978 s 17(2).

15 As respects any workplace which is in fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main

buildings: (1) the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, regs 5-9 and 23-25 (see PARAS 459-464, 477-478) do not apply to any such workplace; and (2) any requirement to ensure that any such workplace complies with any of regs 20-22 (see PARAS 474-476) has effect as a requirement to so ensure so far as is reasonably practicable: reg 3(4).

16 As respects any workplace which is at a quarry or above ground at a mine, the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12 (see PARA 467) only applies to a floor or traffic route which is located inside a building: reg 3(5) (added by SI 1995/2036). For these purposes, 'quarry' means a quarry within the meaning of the Quarries Regulations 1999, SI 1999/2024 (see PARA 838) and 'traffic route' means a route for pedestrian traffic, vehicles or both and includes any stairs, staircase, fixed ladder, doorway, gateway, loading bay or ramp: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (definition of 'quarry' substituted by 1999/2024).

17 'Home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 26(2)(a).

18 'Visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 26(2)(c).

19 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 26(1). 'Headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 26(2)(b); Interpretation Act 1978 s 17(2).

20 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 26(1).

21 See the Approved Code of Practice on Workplace Health, Safety and Welfare (ACoP L24). As to codes of practice approved by the Health and Safety Executive see PARA 426.

22 See *Ricketts v Torbay Council* [2003] EWCA Civ 613.

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#### **457. General responsibility for safety of workplaces.**

Those who have control of a workplace<sup>1</sup> have differing responsibilities for the safety of that workplace depending on whether they are (1) employers; (2) persons who have to any extent control of the workplace; or (3) those deemed to be occupiers under the terms of the Factories Act 1961. These specific duties are in addition to the general duties of employers to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees at work<sup>2</sup> and those of persons in control of non-domestic premises towards persons who are not their employees but who use their premises<sup>3</sup>.

Every employer must ensure that every workplace which is under his control<sup>4</sup>, and where any of his employees work, complies with the regulations<sup>5</sup> that apply to that workplace and which are in force<sup>6</sup> in respect of that workplace<sup>7</sup>.

Every person who has to any extent control of a workplace must ensure that such workplace complies with those requirements of the regulations which are in force which apply to that workplace and relate to matters within that person's control<sup>8</sup>.

Every person deemed to be an occupier of a factory by virtue of the Factories Act 1961<sup>9</sup> must ensure that the premises which are so deemed to be a factory comply with the regulations made under the Health and Safety at Work etc Act 1974<sup>10</sup>.

1 As to the meaning of 'workplace' see PARA 456. The duties expressed in the text apply also to any modification, extension or conversion of any such workplace: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4(1)-(3).

2 See the Health and Safety at Work etc Act 1974 s 2; and PARA 421. As to the meaning of 'employee' see PARA 302 note 4.

3 See the Health and Safety at Work etc Act 1974 s 4; the Occupiers' Liability Act 1957; and PARA 423. As to the meaning of 'non-domestic premises' see PARA 302 note 6. It is the primary responsibility of an employer to provide a safe place of work regardless of whether he owns the premises in which an employee works: *Andrews v Initial Cleaning Services Ltd* [2000] ICR 166, CA. It has been held in a Scottish case that this duty is not owed to non-employees: *Donaldson v Hays Distribution Ltd* [2005] SLT 733, 2005 1 SC 523, Ct of Sess.

4 Any reference in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4 (see the text and notes 5-10) to a person having control of any workplace, modification, extension or conversion is a reference to a person having control of the workplace, modification, extension or conversion in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): reg 4(3). As to the person having control see *King v RCO Support Services Ltd* [2001] ICR 608, [2000] All ER (D) 2200, CA.

5 See the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004: see PARAS 456, 459 et seq.

6 As to the application of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, see PARA 456.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4(1). The detailed requirements of the regulations are set out in PARA 459 et seq.

8 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4(2). This does not impose any requirement upon a self-employed person in respect of his own work or the work of any partner of his in the undertaking: reg 4(4). It applies, however, to such as tenants and licensees. As to the meaning of 'self-employed person' see PARA 302 note 5.

9 le by virtue of the Factories Act 1961 s 175(5): see PARA 322.

10 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4(5). The regulations to be observed are the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004.

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**458. Account to be taken of disabled persons.**

Where necessary, those parts of the workplace<sup>1</sup>, including in particular doors, passageways, stairs, showers, washbasins, lavatories and workstations, used or occupied directly by disabled persons<sup>2</sup> at work must be organised to take account of such persons<sup>3</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 For these purposes, 'disabled person' has the meaning given by the Disability Discrimination Act 1995 s 1 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511): Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (definition added by SI 2002/2174). As to the application of the 1992 regulations see PARA 456.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25A (added by SI 2002/2174).

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#### **459. Maintenance of the workplace and of equipment and systems.**

The workplace<sup>1</sup> and the specified equipment, devices and systems<sup>2</sup> must be maintained, including cleaned as appropriate, in an efficient state, in efficient working order and in good repair<sup>3</sup>. Where appropriate, that equipment and those devices and systems must be subject to a suitable system of maintenance<sup>4</sup>. The specified equipment, devices and systems are:

- 438 (1) equipment and devices a fault in which is liable to result in a failure to comply with any of the relevant regulations<sup>5</sup>;
- 439 (2) mechanical ventilation systems provided pursuant to the statutory requirements<sup>6</sup>; and
- 440 (3) equipment and devices intended to prevent or reduce hazards<sup>7</sup>.

<sup>1</sup> As to the meaning of 'workplace' see PARA 456.

<sup>2</sup> I.e. the equipment, devices and systems to which the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 5 applies: see heads (1)-(3) in the text.

<sup>3</sup> Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 5(1). 'Maintained' in the context of the Factories Act 1961 means maintained in an efficient state, in efficient working order and in good repair: *Factories Act 1961 s 176(1)*. The definition describes a result to be achieved rather than the means of achieving it: *Galashiels Gas Co Ltd v O'Donnell (or Millar)* [1949] AC 275 at 287, [1949] 1 All ER 319 at 324, HL, per Lord MacDermott. The duty to maintain is not necessarily confined purely to the state of the structure but extends, eg, to require reasonable precautions against snow and ice: *Gitsham v CH Pearce & Sons plc* [1992] PIQR P57, CA. It is submitted that the same meaning may be given to this word in the context of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 5. As to the meaning of 'good repair' see *Galashiels Gas Co Ltd v O'Donnell (or Millar)* [1949] AC 275 at 287, [1949] 1 All ER 319 at 324, HL, per Lord MacDermott. The phrase 'good repair' was not defined in the Factories Act 1961; and the combination of 'in an efficient state, in efficient working order and in good repair' in the regulations suggests that the test intended was that set out in this leading case.

The fact that specific obligations are imposed by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12 (see PARA 467) does not prevent obligations arising under reg 5, since those provisions are not mutually exclusive: *Irvine v Metropolitan Police Comr* [2004] EWHC 1536 (QB), [2004] All ER (D) 79 (May).

<sup>4</sup> Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 5(2).

<sup>5</sup> I.e. with any of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004.

<sup>6</sup> I.e. provided pursuant to the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 6 (see PARA 461) (whether or not they include equipment or devices within reg 5(3)(a) (see head (1) in the text)): reg 5(3)(b).

<sup>7</sup> Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 5(3)(a)-(c) (amended by SI 2002/2174).



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**460. Stability and solidity of building used as workplace.**

Where a workplace<sup>1</sup> is in a building, the building must have a stability and solidity appropriate to the nature of the use of the workplace<sup>2</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 4A (added by SI 2002/2174). As to the application of the 1992 regulations see PARA 456. There is no statutory definition of 'building' for these purposes. As to other legislation regarding buildings see PARA 338.

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#### 461. Ventilation.

Effective and suitable<sup>1</sup> provision must be made to ensure that every enclosed workplace<sup>2</sup> is ventilated by a sufficient quantity of fresh or purified air<sup>3</sup>. Any plant<sup>4</sup> used to effect such provision must include an effective device to give visible or audible warning of any failure of the plant where necessary for reasons of health or safety<sup>5</sup>.

1 Any requirement that anything done or provided in pursuance of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (see PARA 456 et seq; the text and notes 2-5; and PARA 462 et seq) is to be suitable is to be construed to include a requirement that it is suitable for any person in respect of whom such thing is so done or provided: reg 2(3).

2 As to the meaning of 'workplace' see PARA 456.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 6(1). As to the application of the 1992 regulations see PARA 456.

The law under the Factories Act 1961 drew a distinction between the circulation of fresh air and the rendering harmless of dangerous fumes and dusts by extraction from the air of a workroom. The analogous s 4 (repealed) did not impose any obligation to render injurious fumes etc harmless by means other than the circulation of fresh air: *Ebbs v James Whitson & Co Ltd* [1952] 2 QB 877, [1952] 2 All ER 192, CA. It referred only to adequate ventilation for ordinary purposes by the circulation of fresh air and did not include any requirement which would mean that exhaust appliances would have to be provided to remove fumes etc from the point of egress so as to prevent them entering the air: *Graham v Co-operative Wholesale Society Ltd* [1957] 1 All ER 654, [1957] 1 WLR 511. This distinction is maintained by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 6, as indicated, first, by the absence of any provision in the wording of that regulation comparable with the requirement in the Factories Act 1961 s 4 (repealed) 'for rendering harmless, so far as practicable, all such fumes, dust and other impurities generated in the course of any process or work carried on in the factory as may be injurious to health' and, second, by the notes of guidance published by the Health and Safety Executive. An approved code of practice and guidance has been published to support the regulations. As to codes of practice approved by the Health and Safety Executive see PARA 426; and as to failure to comply with any provision of the code see PARA 427.

4 As to the meaning of 'plant' see PARA 302 note 7.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 6(2).

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**462. Temperature in indoor workplaces.**

During working hours, the temperature in all workplaces<sup>1</sup> inside buildings must be reasonable<sup>2</sup>. Without prejudice to the generality of this provision:

- 441 (1) a workplace must be adequately thermally insulated where it is necessary, having regard to the type of work carried out and the physical activity of the persons carrying out the work; and
- 442 (2) excessive effects of sunlight on temperature must be avoided<sup>3</sup>.

A sufficient number of thermometers must be provided to enable persons at work to determine the temperature in any workplace inside a building<sup>4</sup>. No method of heating or cooling may be used which results in the escape into the workplace of fumes, gas or vapour of such character and to such extent as to be likely to be injurious or offensive to any person<sup>5</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 7(1). As to the application of the 1992 regulations see PARA 456. The 1992 regulations replace more specific temperature requirements in earlier legislation. The Approved Code of Practice on Workplace Health, Safety and Welfare (ACoP L24) contains more detailed recommendations. As to codes of practice approved by the Health and Safety Executive see PARA 426.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 7(1A) (added by SI 2002/2174).

4 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 7(3).

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 7(2). As to water cooling towers and evaporation condensers see further PARA 610.

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#### **463. Lighting.**

Every workplace<sup>1</sup> must have suitable<sup>2</sup> and sufficient lighting<sup>3</sup>, so far as practicable<sup>4</sup> by natural light<sup>5</sup>. In any room in circumstances where persons at work are specially exposed to danger in the event of failure of artificial lighting<sup>6</sup> suitable and sufficient emergency lighting must be provided<sup>7</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 As to the meaning of 'suitable' see PARA 461 note 1.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 8(1). As to the application of the 1992 regulations see PARA 456.

4 As to the meaning of 'practicable' see PARA 417.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 8(2).

6 Fire precautions legislation may also require the lighting of escape routes. As to fire precautions see PARA 660; and **FIRE SERVICES**.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 8(3). As to the illumination of common parts of certain buildings see the Offices, Shops and Railway Premises Act 1963 ss 42, 43; and PARA 328.

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#### **464. Cleanliness and waste materials.**

Every workplace<sup>1</sup> and the furniture, furnishings and fittings therein must be kept sufficiently clean<sup>2</sup>. The surfaces of the floor, wall and ceiling of all workplaces inside buildings must be capable of being kept sufficiently clean<sup>3</sup>. So far as is reasonably practicable<sup>4</sup> waste materials must not be allowed to accumulate in a workplace except in a suitable receptacle<sup>5</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 9(1). As to the application of the 1992 regulations see PARA 456. For an example of health risks from cleaning see eg *Pape v Cumbria County Council* [1992] 3 All ER 211, [1992] ICR 132 (severe dermatitis from extensive use of regular cleaning agents without protective gloves). As to the cleanliness of common parts of certain buildings see the Offices, Shops and Railway Premises Act 1963 ss 42, 43; and PARA 328.

3 Workplace (Health, Safety and Welfare) Regulations 1992 reg 9(2).

4 As to the meaning of 'reasonably practicable' see PARA 417.

5 Workplace (Health, Safety and Welfare) Regulations 1992 reg 9(3).

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#### **465. Room dimensions, space and overcrowding.**

Every room where persons work must have sufficient floor area, height and unoccupied space for purposes of health, safety and welfare<sup>1</sup>. A workplace<sup>2</sup> which is not a new workplace<sup>3</sup>, a modification, conversion or extension<sup>4</sup> and which immediately prior to 1 January 1996 was subject to the Factories Act 1961 complies sufficiently with this provision if it is not so overcrowded as to cause risk to the health or safety of those employed in it; and if the number of persons employed in the workroom is not such that the amount of cubic space allowed for each is less than 11 cubic metres<sup>5</sup>.

1 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 10(1). As to the application of the 1992 regulations see PARA 456.

2 As to the meaning of 'workplace' see PARA 456.

3 'New workplace' means a workplace used for the first time as a workplace after 31 December 1992: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1).

4 As to the meaning of references to a modification, an extension or a conversion see PARA 456 note 1.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 10(2), Sch 1 Pt I paras 1, 2. In calculating the amount of cubic space for these purposes, no space more than 4.2 metres from the floor may be taken into account and, where a room contains a gallery, the gallery must be treated as if it were partitioned off from the remainder of the room and formed a separate room: Sch 1 Pt I para 3.

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#### **466. Workstations and seating.**

Every workstation<sup>1</sup> must be so arranged that it is suitable<sup>2</sup> both for any person at work in the workplace<sup>3</sup> who is likely to work at that workstation and for any work of the undertaking which is likely to be done there<sup>4</sup>.

Every workstation outdoors must be so arranged that:

- 443 (1) so far as reasonably practicable<sup>5</sup> it provides protection from adverse weather<sup>6</sup>;
- 444 (2) it enables any person at the workstation to leave it swiftly or, as appropriate, to be assisted in the event of an emergency<sup>7</sup>; and
- 445 (3) it ensures that any person at the workstation is not likely to slip or fall<sup>8</sup>.

A suitable seat<sup>9</sup> must be provided for each person at work in the workplace whose work involves operations of a kind that the work (or a substantial part of it) can or must be done sitting<sup>10</sup>.

1 The word 'workstation' is not defined by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, but the word is defined for the purposes of the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792 (see PARA 504 et seq) in respect of workstations where VDUs, process control screens, microfiche readers and similar display units are used.

2 As to the meaning of 'suitable' see PARA 461 note 1.

3 As to the meaning of 'workplace' see PARA 456.

4 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(1). As to the application of the 1992 regulations see PARA 456.

5 Ie and without prejudice to the requirement stated in the text to notes 1-4. As to the meaning of 'reasonably practicable' see PARA 417.

6 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(2)(a).

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(2)(b).

8 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(2)(c).

9 A seat is not suitable for these purposes unless (1) it is suitable for the person for whom it is provided as well as for the operations to be performed; and (2) a suitable foot-rest is also provided where necessary: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(4).

10 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 11(3).

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#### **467. Floors and traffic routes.**

Every floor<sup>1</sup>, and the surface of every traffic route<sup>2</sup>, in a workplace must be of a construction such that the floor or surface of the traffic route is suitable<sup>3</sup> for the purpose for which it is used<sup>4</sup>. Further, the floor or surface of the traffic route must have no hole<sup>5</sup>, nor slope, nor be uneven or slippery so as, in any case, to expose any person to a risk to his health and safety<sup>6</sup>. Every such floor must have effective means of drainage where necessary<sup>7</sup>.

So far as is reasonably practicable<sup>8</sup>, every floor and the surface of every traffic route in a workplace must be kept free from obstructions<sup>9</sup> and from any article or substance<sup>10</sup> which may cause a person to slip, trip or fall<sup>11</sup>.

Suitable and sufficient handrails and, if appropriate, guards must be provided on all traffic routes which are staircases except in circumstances in which a handrail cannot be provided without obstructing the traffic route<sup>12</sup>.

1 There is no statutory definition of 'floor' for these purposes. An embankment in the open air is not a 'floor': *Campbell v East Renfrewshire Council* 2004 SC (D) 2/4, Ct of Sess (OH). For the purposes of the Factories Act 1961, 'floor' means the ordinary floor of the factory which is used by those employed in the ordinary course of their employment: *Johnston v Colvilles Ltd* 1966 SC 4, Ct of Sess. Thus, the sand bed of a foundry may be a floor (*Harrison v Metropolitan-Vickers Electrical Co Ltd* [1954] 1 All ER 404, [1954] 1 WLR 324, CA), but 'mother earth' is not (*Newberry v Joseph Westwood & Co* [1960] 2 Lloyd's Rep 37; *Sullivan v Hall, Russell & Co Ltd* 1964 SLT 192, Ct of Sess). The following have been held not to be a floor: planks laid across the steelwork of a crane gantry (*Tate v Swan Hunter and Wigham Richardson Ltd* [1958] 1 All ER 150, [1958] 1 WLR 39, CA) and a 30 foot roadway in the open (*Thornton v Fisher and Ludlow Ltd* [1968] 2 All ER 241, [1968] 1 WLR 655, CA).

2 As to the meaning of 'traffic route' see PARA 456 note 16.

3 As to the meaning of 'suitable' see PARA 461 note 1.

4 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12(1). As to the application of the 1992 regulations see PARA 456.

The fact that specific obligations are imposed by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12 does not prevent obligations arising under reg 5 (see PARA 459), since those provisions are not mutually exclusive: *Irvine v Metropolitan Police Comr* [2004] EWHC 1536 (QB), [2004] All ER (D) 79 (May).

5 In relation to the Factories Act 1961 it has been held that although an inspection pit in a workshop is a hole (*Barrington v Kent Rivers Catchment Board* [1947] 2 All ER 782), as also is a hole in the sand casting bed of a foundry (*Harrison v Metropolitan-Vickers Electrical Co Ltd* [1954] 1 All ER 404, [1954] 1 WLR 324, CA) or a cleaning pit (*Sanders v FH Lloyd & Co Ltd* [1982] ICR 360), a dry dock is not an opening in a floor nor a hole in it (*Bath v British Transport Commission* [1954] 2 All ER 542, [1954] 1 WLR 1013, CA), and a distinction may be drawn between the edge of a floor at its end and a hole in it (*Street v British Electricity Authority* [1952] 2 QB 399, [1952] 1 All ER 679, CA). Thus a loading bay, at the edge of the floor, is not an opening or hole in it: *Allen v Avon Rubber Co Ltd* [1986] ICR 695, [1987] IRLR 22, CA.

6 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12(2)(a). In considering whether a hole or slope exposes a person to a risk to his health or safety, (1) no account is to be taken of a hole where adequate measures have been taken to prevent a person falling; and (2) account is to be taken of any handrail provided in connection with any slope: reg 12(4). Failure to clean up urine on the floor of a care home for the elderly and mentally infirm has been held to contravene reg 12: see *Ellis v Bristol City Council* [2007] EWCA Civ 685, [2007] ICR 1614.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12(2)(b). The existence of a small risk does not necessarily render a floor unsuitable for the purpose for which it is used, and the fact that an



accident has occurred does not immediately indicate that reg 12(1), (2) has been breached: *Palmer v Marks & Spencer plc* [2001] EWCA Civ 1528, [2001] All ER (D) 123 (Oct).

8 As to the meaning of 'reasonably practicable' see PARA 417.

9 Assistance is given in determining the meaning of 'obstructions' both by the approved code of practice and by the law previously applicable under the Factories Act 1961. In the context of that legislation an obstruction is something which has no business to be on the floor and which ought not reasonably to be there (*Churchill v Louis Marx & Co* (1964) 108 Sol Jo 334, CA); it is an object whose presence on the floor serves no useful purpose and might cause an accident (*Jenkins v Allied Ironfounders Ltd* [1969] 3 All ER 1609, [1970] 1 WLR 304, HL). No obstruction is occasioned by the proper storage of things on the floor (*Pengelly v Bell Punch Co Ltd* [1964] 2 All ER 945, [1964] 1 WLR 1055, CA), by the presence of a trolley in a gangway in the ordinary course of work (*Marshall v Ericsson Telephones Ltd* [1964] 3 All ER 609, [1964] 1 WLR 1367, CA) or by part of a machine fixed to the floor (*Drummond v Harland Engineering Co Ltd* 1963 SC 162, Ct of Sess). An item as small as a screw can be an obstruction (*Gillies v Glynwed Foundries* 1977 SLT 97, Ct of Sess; *Patterson v Lothian Regional Council* (26 February 1992, unreported), Ct of Sess); and an obstruction is nonetheless an obstruction even if transient (*Cox v HCB Angus Ltd* [1981] ICR 683), though there was no breach of the corresponding provision under the Factories Act 1961 where the lack of safety arose from some transient and exceptional condition (*Latimer v AEC Ltd* [1953] AC 643, [1953] 2 All ER 449, HL). Foreseeability of an obstruction was held not to be relevant in considering whether it was reasonably practicable for an employer to avoid it (*Bennett v Rylands Whitecross* [1978] ICR 1031), but the small size of the relevant obstruction (such as a screw: *Gillies v Glynwed Foundries* 1977 SLT 97, Ct of Sess) is relevant to such consideration.

10 As to the meaning of 'substance' see PARA 302 note 7.

11 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12(3). The requirement to keep the floor free of substances that may cause persons to slip, trip or fall includes, where appropriate, a requirement to keep the floor free of water: *Taylor v Gestetner Ltd* (1967) 2 KIR 133. The slippery substance need not itself be in contact with the floor: *Dorman Long (Steel) Ltd v Bell* [1964] 1 All ER 617, [1964] 1 WLR 333, HL (metal plates slippery with slag dust, placed temporarily on floor). See, however, *Braham v J Lyons & Co Ltd* [1962] 3 All ER 281, [1962] 1 WLR 1048, CA (plaintiff's own fault in wearing rubber-soled shoes). Not only must floors be cleaned of any such substance, but precautions must be taken to prevent its being on the floor at all: *Johnston v Caddies Wainwright Ltd* [1983] ICR 407, CA. The cases cited were all decided on the analogous provisions of the Factories Act 1961. For cases under the 1992 regulations see eg *McGhee v Strathclyde Fire Brigade* 2002 SLT 680, OH (application of polish giving rise to liability); *Anderson v Newham College of Further Education* [2002] EWCA Civ 505, [2003] ICR 212, [2002] All ER (D) 381 (Mar) (whiteboard incorrectly stored so that its legs protruded to a greater length than the body of the board, causing claimant to trip; defendant employer in breach of statutory duty); *Harper v Staffordshire County Council* 147 Sol Jo LB 176, [2003] All ER (D) 60 (Feb) (teacher slipped on food debris left on stairs; reasonable steps could have been taken by the school to keep the stairs free from such debris; local authority employer liable for teacher's injury); *Burgess v Plymouth City Council* [2005] EWCA Civ 1659, [2006] ICR 579 (school employee fell over lunchbox container left on floor of classroom; local authority liable). See also *Ellis v Bristol City Council* [2007] EWCA Civ 685, [2007] ICR 1614 (cited in note 6).

12 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 12(5). Three steps from the floor to part of a machine have been held not to constitute a staircase: *Kimpton v Steel Co of Wales Ltd* [1960] 2 All ER 274, [1960] 1 WLR 527, CA. It does not follow that because a handrail has been installed after an accident the failure of the employer to do so before was negligent: see *Coates v Jaguar Cars Ltd* [2004] EWCA Civ 337, [2004] All ER (D) 87 (Mar). Steep stairways may also be subject to the provisions covered in PARA 468.

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**468. Falls.**

So far as is practicable<sup>1</sup>, every tank, pit, or structure where there is a risk of a person in the workplace<sup>2</sup> falling into a dangerous substance<sup>3</sup> therein must be securely covered or fenced<sup>4</sup> and any traffic route<sup>5</sup> over, across, or in an uncovered tank, pit or structure must be securely fenced<sup>6</sup>.

1 As to the meaning of 'practicable' see PARA 417.

2 As to the meaning of 'workplace' see PARA 456.

3 For this purpose, 'dangerous substance' means (1) any substance likely to scald or burn; (2) any poisonous substance; (3) any corrosive substance; (4) any fume, gas or vapour likely to overcome a person; and (5) any granular or free-flowing solid substance, or any viscous substance which, in any case, is of a nature or a quantity which is likely to cause danger to any person: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 13(7).

4 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 13(5). As to the application of the 1992 regulations see PARA 456.

5 As to the meaning of 'traffic route' see PARA 456 note 16.

6 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 13(6).

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**469. Windows and transparent or translucent doors, gates and walls.**

Every window or other transparent or translucent surface in a wall or partition and every transparent or translucent surface in a door or gate must, where necessary for reasons of health or safety, (1) be of safety material or be protected against breakage of the transparent or translucent material; and (2) be appropriately marked or incorporate features so as, in either case, to make it apparent<sup>1</sup>.

<sup>1</sup> Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 14. As to the application of the 1992 regulations see PARA 456.

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**470. Windows, skylights and ventilators.**

Any window, skylight, or ventilator which is capable of being opened must not be likely to be opened, closed or adjusted in a manner which exposes any person performing such an operation to a risk to his health or safety<sup>1</sup>. Any window, skylight or ventilator must not be in a position when open which is likely to expose any person in the workplace<sup>2</sup> to a risk to his health or safety<sup>3</sup>.

All windows and skylights in a workplace must be of a design or be so constructed<sup>4</sup> that they may be cleaned safely<sup>5</sup>.

1 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 15(1). As to the application of the 1992 regulations see PARA 456.

2 As to the meaning of 'workplace' see PARA 456.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 15(2).

4 In considering whether a window or skylight is of such a design or construction, account may be taken of equipment used in conjunction with the window or skylight or of devices fitted to the building: Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 16(2).

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 16(1).

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#### **471. Organisation of traffic routes.**

Every workplace<sup>1</sup> must be organised in such a way that pedestrians and vehicles can circulate in a safe manner<sup>2</sup>. Traffic routes<sup>3</sup> must be suitable<sup>4</sup> for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size<sup>5</sup>. This requirement<sup>6</sup> is not satisfied unless suitable measures are taken to ensure that:

- 446 (1) pedestrians, or as the case may be, vehicles may use a traffic route without causing danger to the health or safety of persons at work near it; and
- 447 (2) there is sufficient separation of any traffic route for vehicles from doors or gates or from traffic routes for pedestrians which lead onto it; and
- 448 (3) where vehicles and pedestrians use the same traffic route there is sufficient separation between them<sup>7</sup>.

All traffic routes must be suitably indicated where necessary for reasons of health and safety<sup>8</sup>.

1 As to the meaning of 'workplace' see PARA 456.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 17(1). As to the application of the 1992 regulations see PARA 456.

3 As to the meaning of 'traffic route' see PARA 456 note 16.

4 As to the meaning of 'suitable' see PARA 461 note 1.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 17(2). In the case of a workplace which is not a new workplace, nor modification, extension or conversion of an existing workplace (see PARA 456 note 1), the obligation is to comply so far as is reasonably practicable: reg 17(5). It is otherwise absolute. As to the meaning of 'new workplace' see PARA 465 note 3.

6 I.e. the requirement in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 17(2): see the text and notes 3-5.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 17(3).

8 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 17(4).

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#### **472. Doors and gates.**

Doors<sup>1</sup> and gates must be suitably constructed, including being fitted with any necessary safety devices<sup>2</sup>. Doors and gates do not comply with this requirement<sup>3</sup> unless:

- 449 (1) any sliding door or gate has a device to prevent it coming off its track during use;
- 450 (2) any upward opening door or gate has a device to prevent it falling back;
- 451 (3) any powered door or gate has suitable<sup>4</sup> and effective features to prevent it causing injury by trapping any person;
- 452 (4) where necessary for reasons of health or safety, any powered door or gate can be operated manually unless it opens automatically if the power fails; and
- 453 (5) any door or gate which is capable of opening by being pushed from either side is of such a construction as to provide, when closed, a clear view of the space close to both sides<sup>5</sup>.

1 'Work equipment' has been held to include a door: see *Beck v United Closures & Plastics plc* 2001 SLT 1299, 2002 SCLR 154, Ct of Sess (OH).

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 18(1). As to the application of the 1992 regulations see PARA 456.

3 Ie without prejudice to the generality of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 18(1): reg 18(2).

4 As to the meaning of 'suitable' see PARA 461 note 1.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 18(2).

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**473. Escalators and moving walkways.**

Escalators and moving walkways must function safely, be equipped with any necessary devices, and be fitted with one or more emergency stop controls which are easily identifiable and readily accessible<sup>1</sup>.

<sup>1</sup> Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 19. As to the application of the 1992 regulations see PARA 456.

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#### **474. Sanitary conveniences.**

Suitable<sup>1</sup> and sufficient sanitary conveniences must be provided in a workplace<sup>2</sup> at readily accessible places<sup>3</sup>. Sanitary conveniences are not suitable<sup>4</sup> unless:

- 454 (1) the rooms containing them are adequately ventilated and lit;
- 455 (2) they and the rooms containing them are kept in a clean and orderly condition; and
- 456 (3) separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside<sup>5</sup>.

In a workplace which is not a new workplace<sup>6</sup>, a modification, an extension or a conversion<sup>7</sup> and which, immediately before 1 January 1996<sup>8</sup>, was subject to the provisions of the Factories Act 1961, it is sufficient compliance with the above requirement to provide sufficient sanitary conveniences if, in workplaces where females work, there is at least one suitable water closet for use by females only for every 25 females and, in workplaces where males work, there is at least one suitable water closet for use by males only for every 25 males<sup>9</sup>.

More specific guidance is contained in the approved code of practice<sup>10</sup>.

1 As to the meaning of 'suitable' see PARA 461 note 1.

2 As to the meaning of 'workplace' see PARA 456.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 20(1). As to the application of the 1992 regulations see PARA 456.

A toilet in the flat above a shop was held to be 'conveniently accessible' (the comparable phrase in the Offices, Shops and Railway Premises Act 1963 s 9 (repealed)) to women working in the shop below: *AC Davis & Sons v Leeds City Council Environmental Health Department* [1976] IRLR 282.

4 Ie without prejudice to the generality of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 20(1): reg 20(2).

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 20(2). As to the application of reg 20(2) to transsexual employees see *Croft v Consignia plc* [2003] EWCA Civ 1045, [2003] ICR 1425, [2003] IRLR 592; and see further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 348.

6 As to the meaning of 'new workplace' see PARA 465 note 3.

7 As to the meaning of 'modification, extension or conversion' see PARA 456 note 1.

8 Ie the date when the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 20 came into force in respect of it: see PARA 456.

9 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 20(3), Sch 1 Pt II paras 4, 5. In calculating the number of males or females who work in any workplace for these purposes, any number not itself divisible by 25 without fraction or remainder is to be treated as the next number higher than it which is so divisible: Sch 1 Pt II para 6.

10 See the Approved Code of Practice on Workplace Health, Safety and Welfare (ACoP L24). As to codes of practice approved by the Health and Safety Executive see PARA 426.





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#### **475. Washing facilities.**

Suitable<sup>1</sup> and sufficient washing facilities, including showers if required by the nature of the work or for health reasons, must be provided at readily accessible places in a workplace<sup>2</sup>. Washing facilities are not suitable<sup>3</sup> unless:

- 457 (1) they are provided in the immediate vicinity of every sanitary convenience, whether or not provided elsewhere as well;
- 458 (2) they are provided in the vicinity of any changing rooms required by the relevant regulations<sup>4</sup>, whether or not provided elsewhere as well;
- 459 (3) they include a supply of clean hot and cold, or warm, water, which must be running water so far as is practicable<sup>5</sup>;
- 460 (4) they include soap or other suitable means of cleaning;
- 461 (5) they include towels or other suitable means of drying;
- 462 (6) the rooms containing them are sufficiently ventilated and lit;
- 463 (7) they and the rooms containing them are kept in a clean and orderly condition; and
- 464 (8) separate facilities are provided for men and women, except where and so far as they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time<sup>6</sup>;

but head (8) above does not apply to facilities which are provided for washing hands, forearms and face only<sup>7</sup>.

More specific guidance on the numbers of washrooms is contained in the approved code of practice<sup>8</sup>.

1 As to the meaning of 'suitable' see PARA 461 note 1.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 21(1). As to the application of the 1992 regulations, and as to the meaning of 'workplace', see PARA 456.

3 Ie without prejudice to the generality of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 21(1): reg 21(2).

4 Ie by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004. As to changing rooms see PARA 477.

5 As to what is 'practicable' see PARA 417.

6 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 21(2).

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 21(3).

8 See the Approved Code of Practice on Workplace Health, Safety and Welfare (ACoP L24). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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**476. Drinking water.**

An adequate supply of wholesome drinking water must be provided for all persons at work in the workplace<sup>1</sup>, together with a sufficient number of suitable<sup>2</sup> cups or other drinking vessels, unless the supply is in a jet from which persons can drink easily<sup>3</sup>. The supply of drinking water must be readily accessible at suitable places and be conspicuously marked by an appropriate sign where necessary for reasons of health or safety<sup>4</sup>.

1 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 22(1). As to the application of the 1992 regulations, and as to the meaning of 'workplace', see PARA 456.

2 As to the meaning of 'suitable' see PARA 461 note 1.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 22(3).

4 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 22(2).

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#### **477. Accommodation for clothing and changing facilities.**

Suitable<sup>1</sup> and sufficient accommodation must be provided for the clothing of any person at work which is not worn during working hours and for special clothing which is worn by any person at work but which is not taken home<sup>2</sup>. Such accommodation is not suitable<sup>3</sup> unless:

- 465 (1) where facilities to change clothing are required<sup>4</sup>, it provides suitable security for the clothing not worn during working hours;
- 466 (2) where necessary to avoid risks to health or damage to the clothing, it includes separate accommodation for clothing worn at work and for other clothing;
- 467 (3) so far as is reasonably practicable, it allows or includes facilities for drying clothing; and
- 468 (4) it is in a suitable location<sup>5</sup>.

Suitable and sufficient facilities must be provided for any person at work in a workplace<sup>6</sup> to change clothing in all cases where that person has to wear special clothing for the purpose of work and that person cannot, for reasons of health or propriety, be expected to change in another room<sup>7</sup>. Such facilities are not suitable<sup>8</sup> unless they include separate facilities for, or separate use of facilities by, men and women where necessary for reasons of propriety and the facilities are easily accessible, of sufficient capacity and provided with seating<sup>9</sup>.

Specific provisions for the storage of clothing and changing facilities in particular processes and industries have also been made<sup>10</sup>.

1 As to the meaning of 'suitable' see PARA 461 note 1.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 23(1). As to the application of the 1992 regulations see PARA 456.

3 Ie without prejudice to the generality of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 23(1): reg 23(2).

4 Ie by the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 24: see the text and notes 6-10.

5 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 23(2).

6 As to the meaning of 'workplace' see PARA 456.

7 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 24(1). See *Post Office v Footitt* [2000] IRLR 243 (post office worker's uniform was special clothing).

8 Ie without prejudice to the generality of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 24(1): reg 24(2).

9 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 24(2) (amended by SI 2002/2174).

10 See eg the Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(7); and PARA 650 note 36; the Control of Asbestos Regulations 2006, SI 2006/2739, reg 23; and PARA 635 text and notes 38-39.

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#### **478. Facilities for rest and for meals.**

Suitable<sup>1</sup> and sufficient rest facilities must be provided at readily accessible places in each workplace<sup>2</sup>, including suitable facilities to eat meals where food eaten in the workplace would otherwise be likely to become contaminated<sup>3</sup>; and, where necessary for reasons of health or safety, rest facilities provided in one or more rest rooms (in the case of a new workplace<sup>4</sup>, extension, or conversion<sup>5</sup>) or otherwise in rest rooms or rest areas<sup>6</sup>. Rest rooms and rest areas must be equipped with:

- 469 (1) an adequate number of tables and adequate seating with backs for the number of persons at work likely to use them at any one time; and
- 470 (2) seating which is adequate for the number of disabled persons<sup>7</sup> at work and suitable for them<sup>8</sup>.

Suitable facilities must be provided for any person at work who is a pregnant woman or nursing mother to rest<sup>9</sup>; and suitable and sufficient facilities must be provided for the eating of meals where meals are regularly eaten in the workplace<sup>10</sup>.

1 As to the meaning of 'suitable' see PARA 461 note 1.

2 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(1). As to the application of the 1992 regulations, and as to the meaning of 'workplace', see PARA 456.

3 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(2)(b).

4 As to the meaning of 'new workplace' see PARA 465 note 3.

5 As to the meaning of 'modification, extension or conversion' see PARA 456 note 1.

6 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(2)(a). As to provision for the protection of non-smokers from discomfort caused by tobacco smoke see reg 25(3)(a) (reg 25(3) substituted by SI 2002/2174).

7 As to the meaning of 'disabled person' see PARA 458 note 2.

8 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(3)(b) (as substituted: see note 6).

9 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(4).

10 Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 25(5).

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#### **479. Restrictions on smoking in premises used as a place of work.**

The provisions<sup>1</sup> prohibiting smoking<sup>2</sup> in certain premises<sup>3</sup>, places and vehicles<sup>4</sup> which are smoke-free<sup>5</sup> apply, inter alia, to premises used as a place of work<sup>6</sup> by more than one person (even if the persons who work there do so at different times, or only intermittently), or where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present)<sup>7</sup>. Such premises are smoke-free all the time<sup>8</sup>. If only part of the premises is used as a place of work, the premises are smoke-free only to that extent<sup>9</sup>. In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed<sup>10</sup>. Provision is made for some premises, or areas of premises, not to be smoke-free despite the above provisions<sup>11</sup>.

It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the statutory requirements<sup>12</sup> are displayed in those premises in accordance with those requirements<sup>13</sup>. A person who fails to comply with this duty commits an offence<sup>14</sup>.

A person who smokes in a smoke-free place<sup>15</sup> commits an offence<sup>16</sup>. It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking<sup>17</sup>, and a person who fails to comply with this duty commits an offence<sup>18</sup>.

1 The Health Act 2006 Pt 1 Ch 1 (ss 1-12): see generally **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 250 et seq. Part 1 Ch 1 has effect in relation to the territorial sea adjacent to England as it has effect in relation to England, and has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales: s 12(3). The following have effect for the purposes of s 12(3) if or in so far as expressed to apply for the general or residual purposes of the Act in question or for the purposes of the Health Act 2006 s 12: (1) an Order in Council under the Scotland Act 1998 s 126(2); (2) an order or Order in Council under or by virtue of the Government of Wales Act 2006 s 158(3), (4): Health Act 2006 s 12(4) (amended by SI 2007/1388).

2 For these purposes, (1) 'smoking' refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked (Health Act 2006 s 1(2)); and (2) 'smoke' and other related expressions are to be read in accordance with s 1(2) (s 1(3)).

3 'Premises' includes a tent, and (if not a ship within the meaning of the Merchant Shipping Act 1995) a moveable structure and an offshore installation (as defined in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: see PARA 733 note 2): Health Act 2006 s 12(1). The appropriate national authority may by order provide for the definition of 'premises' in s 12(1) to be read as if a reference to another enactment were substituted for the reference to the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: Health Act 2006 s 12(2). 'Appropriate national authority' means (1) in relation to England, the Secretary of State; and (2) in relation to Wales, the Welsh Ministers: s 82(1); Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(c).

4 'Vehicle' means every type of vehicle, including train, vessel, aircraft and hovercraft: Health Act 2006 ss 5(5), 12(1). The appropriate national authority may make regulations providing for vehicles to be smoke-free: s 5(1). As to such regulations see further s 5(2), (3); and as to regulations under the 2006 Act generally see s 79. An enclosed vehicle and any enclosed part of a vehicle is smoke-free if it is used (1) by members of the public or a section of the public (whether or not for reward or hire); or (2) in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times, or only intermittently): Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 11(1). A vehicle is not used in the course of

paid or voluntary work for the purposes of reg 11(1)(b) where it is used primarily for the private purposes of a person who either owns it or has a right to use it which is not restricted to a particular journey: reg 11(5). As to the meaning of 'enclosed' see reg 11(2)-(4). Regulation 11 applies to all vehicles other than (a) aircraft; or (b) ships or hovercraft in respect of which regulations could be made under the Merchant Shipping Act 1995 s 85 (safety and health on ships: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 591), including that section as applied by any Order in Council under the Hovercraft Act 1968 s 1(1)(h) or to persons on any such ships or hovercraft: Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 11(6). A similar provision applies in relation to Wales: see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 4.

5 le which are smoke-free by virtue of the Health Act 2006 Pt 1 Ch 1: s 1(1). Premises are also smoke-free if they are open to the public, but unless the premises also fall within s 2(2) (see the text to notes 6-7), they are smoke-free only when open to the public: s 2(1). Premises are 'open to the public' if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not: s 2(7). The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free, if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke: see s 4.

6 For these purposes, 'work' includes voluntary work: Health Act 2006 s 2(8).

7 Health Act 2006 s 2(2). As to enforcement see ss 10, 11, Sch 2; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 257-258.

8 Health Act 2006 s 2(2).

9 Health Act 2006 s 2(3).

10 Health Act 2006 s 2(4). The appropriate national authority may specify in regulations what 'enclosed' and 'substantially enclosed' mean: s 2(5). 'Specified', in relation to regulations, means specified in the regulations: s 12(1). See the Smoke-free (Premises and Enforcement) Regulations 2006, SI 2006/3368, reg 2; the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 2; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.

11 See the Health Act 2006 ss 2(6), 3; and the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, Pt 2 (regs 2-10); the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251. For the purpose of making provision for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke, the power to exempt specified premises or areas also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers: see s 3(5). In relation to England, see the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 6. Other exemptions include the shop of a specialist tobacconist that is being used by persons who are sampling cigars and pipe tobacco for the duration of that sampling if it meets specified conditions (reg 7), a designated room in an offshore installation (reg 8), a designated room in a research or testing facility whilst it is being used for specified research or tests (reg 9). In relation to Wales, a designated room in a research or testing facility is not smoke-free whilst it is being used for specified research or tests: see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(4)(b), (6).

12 le the requirements of the Health Act 2006 s 6. The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority (s 6(3)) and must conform to any requirements specified in regulations made by the appropriate national authority (eg requirements as to content, size, design, colour, or wording) (s 6(4)). See the Smoke-free (Signs) Regulations 2007, SI 2007/923; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, regs 5, 6.

13 Health Act 2006 s 6(1). Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in s 6(1) in relation to (1) places which are smoke-free by virtue of s 4; and (2) vehicles which are smoke-free by virtue of s 5: s 6(2). The duty is to be imposed on persons, or on persons of a description, specified in the regulations: s 6(2). The references in s 6, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1 (and references to smoke-free premises include premises which by virtue of regulations under s 3(5) are smoke-free except in relation to performers): s 6(9).

14 Health Act 2006 s 6(5). This applies to the duty in s 6(1) or any corresponding duty in regulations under s 6(2): s 6(5). It is a defence for a person charged with an offence under s 6(5) to show (1) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free); or (2) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of s 6 were not being displayed in accordance with the requirements of s 6; or (3) that on other grounds it was reasonable for him not to comply with the duty: s 6(6). If a person charged with an offence under s 6(5) relies on a defence in s 6(6), and

evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 6(7). A person guilty of an offence under s 6(5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 6(8); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(1). As to the standard scale see PARA 853 note 29. Fixed penalties may apply in relation to an offence under the Health Act 2006 s 6(5): see s 9, Sch 1; and the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(4).

15 For these purposes, a 'smoke-free place' means any of the following: (1) premises, so far as they are smoke-free under or by virtue of the Health Act 2006 ss 2, 3 (including premises which by virtue of regulations under s 3(5) are smoke-free except in relation to performers: see note 11); (2) a place, so far as it is smoke-free by virtue of s 4; (3) a vehicle, so far as it is smoke-free by virtue of s 5: s 7(1).

16 Health Act 2006 s 7(2). A person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under s 3(5) does not commit an offence if he is such a performer: s 7(3). It is a defence for a person charged with an offence under s 7(2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place: s 7(4). If a person charged with an offence under s 7 relies on a defence in s 7(4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 7(5). A person guilty of an offence under s 7 is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 7(6); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(2). Fixed penalties may apply in relation to an offence under the Health Act 2006 s 7(2): see s 9, Sch 1; and the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(5).

17 Health Act 2006 s 8(1). The reference in s 8(1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under s 3(5): s 8(2). Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in s 8(1) in relation to (1) places which are smoke-free by virtue of s 4; (2) vehicles which are smoke-free by virtue of s 5: s 8(3). The duty is to be imposed on persons, or on persons of a description, specified in the regulations: s 8(3). The references in s 8, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1 (and references to smoke-free premises include premises which by virtue of regulations under s 3(5) are smoke-free except in relation to performers): s 8(8). In relation to a vehicle, persons under a duty corresponding to that in s 8(1) are (in England) the driver, any person with management responsibilities for the vehicle and any person on a vehicle who is responsible for order or safety on it (Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, SI 2007/760, reg 2); and (in Wales) the operator, the driver and any person on a vehicle who is responsible for order or safety on it (Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, regs 6(5), 7).

18 Health Act 2006 s 8(4). This applies to the duty in s 8(1) or any corresponding duty in regulations under s 8(3): s 8(4). It is a defence for a person charged with an offence under s 8(4) to show (1) that he took reasonable steps to cause the person in question to stop smoking; or (2) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or (3) that on other grounds it was reasonable for him not to comply with the duty: s 8(5). If a person charged with an offence under s 8 relies on a defence in s 8(5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 8(6). A person guilty of an offence under s 8 is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 8(7); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(5).

## **UPDATE**

### **479 Restrictions on smoking in premises used as a place of work**

NOTE 1--Government of Wales Act 2006 s 158(3) substituted: Marine and Coastal Access Act 2009 s 43(3).



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#### **480. Derelict petrol tanks.**

Where a fixed tank or other fixed container which has been used for the storage of petroleum spirit<sup>1</sup>, and is no longer used for that purpose, is kept on any premises, the occupier of the premises must take all such steps as may be reasonably necessary to prevent danger from the container<sup>2</sup>. An officer of the local authority<sup>3</sup> duly authorised by it may, on producing, if so required, some duly authenticated document showing his authority, require the occupier of premises on which there is any tank or other container to which these provisions apply to show it to him and permit him to ascertain whether steps have been taken to comply with the requirement to prevent danger<sup>4</sup>. The local authority may by notice require the occupier of the premises to take any steps reasonably necessary to prevent danger from any tank or other container to which these provisions apply<sup>5</sup>.

1 For these purposes, 'petroleum spirit' has the same meaning as in the Petroleum (Consolidation) Act 1928 (see s 23; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1626): Public Health Act 1961 s 73(6).

2 Public Health Act 1961 s 73(1). Section 73: (1) applies in relation to premises which are unoccupied with the substitution for the references to the occupier of the premises of references to their owner (as defined in the Public Health Act 1936 s 343(1)); and (2) does not apply to premises situated within the jurisdiction of a harbour authority (as defined in the Petroleum (Consolidation) Act 1928 s 23): Public Health Act 1961 s 73(5).

3 For these purposes, the expression 'local authority', except where the context otherwise requires, means the council of a borough or urban district, the Common Council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, and includes the Council of the Isles of Scilly: Public Health Act 1961 s 2(3) (amended by the London Government Act 1963 s 40, Sch 11; and the Local Government Act 1972 s 272(1), Sch 30). The functions of a local authority under the Public Health Act 1961 s 73 are functions, in Greater London or a metropolitan county, of the fire and rescue authority and, elsewhere, of the county council, and references in s 73, and in the provisions of that Act applied by s 73 (see note 5), to a local authority are to be construed accordingly: Local Government Act 1985 Sch 11 para 5 (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 paras 58, 61).

4 Public Health Act 1961 s 73(2).

5 Public Health Act 1961 s 73(3). The provisions of the Public Health Act 1936 Pt XII (ss 275-347) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 113 et seq), with respect to appeals against, and the enforcement of, notices requiring the execution of works apply in relation to any notice under the Public Health Act 1961 s 73(3), and so apply as if s 73 were contained in that Act: Public Health Act 1961 s 73(4).

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## (ii) Factories

### 481. Factory lines and sidings.

Lines of rails<sup>1</sup> and sidings in, or used in connection with, any factory<sup>2</sup> or place to which the Factories Act 1961 applies<sup>3</sup>, not being part of a railway<sup>4</sup>, and the use there of locomotives, wagons and other rolling stock, are governed by regulations<sup>5</sup>.

Lines of rails and points must be periodically examined and kept in efficient order, having regard to the nature of the traffic<sup>6</sup>.

Every gantry<sup>7</sup> must be properly constructed and kept in proper repair; it must have a properly fixed structure to act as a stop-block at any terminal point, and at every part where persons employed have to work or pass on foot there must be a suitable footway and, if the footway is provided between a line of rails and the edge of the gantry, it must, so far as is reasonably practicable<sup>8</sup>, having regard to the traffic and working, be securely fenced at such a distance from the rails as to afford a reasonably sufficient space for such persons to pass in safety between the fence and a locomotive, wagon, or load on the line of rails<sup>9</sup>.

The mechanism of a capstan worked by power and used for the traction of wagons on a line of rails must be maintained in efficient condition and, if operated by a treadle, the treadle must be tested daily before use<sup>10</sup>.

The space immediately around a capstan worked by power and used for the traction of wagons on a line must be kept clear of all obstruction<sup>11</sup>. Such a capstan must not be set in motion until signals have been exchanged between the person in charge of it and the person working the rope or chain attached to it<sup>12</sup>.

1 'Lines of rails' means lines of rails or sidings for the use of locomotives or wagons, except such lines as are used exclusively for (1) a gantry crane or travelling crane; or (2) any charging machine or other apparatus or vehicle used exclusively in or about any actual process of manufacture; 'locomotive' includes any wheeled motor on a line of rails used for the movement of wagons and any self-moving crane; and 'wagon' includes any wheeled vehicle or non-self-moving crane on a line of rails: Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, preamble. These regulations were made under the Factory and Workshop Act 1901 (repealed) and now have effect as if made under the Factories Act 1961 s 76 (itself now repealed with savings for any regulations made or having effect as if made thereunder), by virtue of s 183(1), Sch 6 paras 1, 2 and the Factories Act 1961 etc (Repeals and Modifications) Regulations 1974, SI 1974/1941, regs 2(a), 7(3), Sch 1.

2 As to the meaning of 'factory' see PARA 318 et seq.

3 As to premises to which the Factories Act 1961 applies see PARA 307 et seq. Lines and sidings used in connection with building operations and works of engineering construction are also subject to the regulations which apply to those operations and works: see PARA 683 et seq.

4 Ie within the meaning of the Railway Employment (Prevention of Accidents) Act 1900 (now repealed).

5 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, preamble. It is the duty of the occupier of the factory or place to which the Factories Act 1961 applies and of the occupier of any line of rails or sidings used in connection with a factory or such place to comply with the Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, Pt I (regs 1-8). As to the occupier of a factory see PARA 862 text and notes 5-6. It is the duty of every person who by himself, his agents or workmen carries on any of the operations to which the regulations apply to comply with Pt II (reg 20); and it is the duty of all agents, workmen and persons

employed to comply with Pt II: preamble. An occupier who is also a person who carries on operations to which the regulations apply cannot rely upon the Factories Act 1961 s 155(2) (see PARA 862) to absolve him from liability for a failure to comply with an operator's duty under the Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, Pt II: *Wagon Repairs Ltd v Vosper* (1967) 3 KIR 605, DC.

Nothing in the regulations applies to (1) a line of rails of less than 920 mm gauge and locomotives and wagons used on it; (2) a line of rails not worked by mechanical power; (3) a line of rails inside a railway goods warehouse; (4) a line of rails forming part of a mine or a quarry within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1), not being a line of rails within or used solely in connection with any factory not incidental to the maintenance or working of the mine or quarry or to the carrying on of its business; (5) pit banks of mines to which the Mines and Quarries Act 1954 applies and private lines of rails used in connection with them; (6) lines of rails in connection with factories so far as they are outside the factory premises and used for running purposes only; (7) wagons not moved by mechanical power; (8) buildings in course of construction; (9) any site for the manufacture of explosives which is specified in a licence granted under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see **EXPLOSIVES**); (10) all lines and sidings on or used in connection with docks, wharves and quays not forming part of a factory as defined in the Factories Act 1961 s 175 (see PARA 318 et seq); (11) wagon or locomotive building or repairing shops; or (12) depots or car sheds being parts of tramway or light railway undertakings authorised by Parliament and used for the storage, cleaning, inspection or repair of tramway cars or light railway cars: Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, preamble (amended by SI 1981/1327 and SI 2005/1082).

6 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, reg 3.

7 'Gantry' means an elevated structure of wood, masonry or metal, exceeding 2 metres in height and used for loading or unloading, which carries a line of rails on which wagons are worked by mechanical power: Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, preamble (as amended: see note 5).

8 As to what is reasonably practicable see PARA 417.

9 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, reg 4.

10 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, reg 8.

11 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, regs 8, 20(a).

12 Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings Regulations 1906, SR & O 1906/679, reg 20(b).

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## **(2) PROVISION AND USE OF SAFE WORK EQUIPMENT**

### **(i) Provision and Use of Equipment; in general**

#### **A. GENERAL REQUIREMENTS**

##### **482. Application of the Provision and Use of Work Equipment Regulations 1998.**

The provision and use of work equipment generally is regulated by the Provision and Use of Work Equipment Regulations 1998<sup>1</sup>, which came into force on 5 December 1998<sup>2</sup>. The 1998 regulations apply both in and, in certain circumstances, outside<sup>3</sup> Great Britain<sup>4</sup>.

The requirements imposed by those regulations on an employer<sup>5</sup> in respect of work equipment<sup>6</sup> apply to such equipment provided for use<sup>7</sup> or used by an employee of his at work<sup>8</sup>; and the requirements so imposed on an employer also apply:

- 471 (1) to a self-employed person<sup>9</sup>, in respect of work equipment he uses at work<sup>10</sup>;
- 472 (2) to a person, except in respect of work equipment supplied by him by way of sale, agreement for sale or hire-purchase agreement<sup>11</sup>, who has control<sup>12</sup> to any extent of:
  - 75 126. (a) work equipment;
  - 127. (b) a person at work who uses or supervises or manages the use of work equipment; or
  - 128. (c) the way in which work equipment is used at work,
  - 76 473 and to the extent of his control<sup>13</sup>.

Subject to the following provisions, the 1998 regulations do not impose any obligation in relation to a ship's<sup>14</sup> work equipment, whether that equipment is used on or off the ship<sup>15</sup>. Where, however, merchant shipping requirements<sup>16</sup> are applicable to a ship's work equipment<sup>17</sup>, the above provision relieves the shore employer<sup>18</sup> of his obligations under those regulations in respect of that equipment only where he has taken all reasonable steps to satisfy himself that the merchant shipping requirements are being complied with in respect of that equipment<sup>19</sup>.

Where the ship's work equipment is used in a specified operation<sup>20</sup>, certain provisions of the regulations are not disapplied<sup>21</sup>. Further, the relief from the obligations imposed in relation to a ship's work equipment<sup>22</sup> does not apply to a ship's work equipment provided for use or used in a specified activity<sup>23</sup>, whether carried on in or outside Great Britain, except that it does apply to:

- 474 (i) the loading, unloading, fuelling or provisioning of the ship; or
- 475 (ii) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of the ship<sup>24</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any of the home forces<sup>25</sup>, any visiting force<sup>26</sup> or any headquarters<sup>27</sup> from any requirement or prohibition imposed by the 1998 regulations; and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State by a certificate in writing at any time<sup>28</sup>.

The regulations are supported by an approved code of practice<sup>29</sup>.

1     le the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see the text and notes 2-28; and PARA 483 et seq.

2     Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 1. The requirements in regs 25-30 (mobile work equipment: see PARA 496 et seq) did not apply to work equipment provided for use in the undertaking or establishment in question before 5 December 1998 until 5 December 2002: reg 37.

3     le they apply outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(1)(b); Interpretation Act 1978 s 17(2).

4     Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(1). As to the meaning of 'Great Britain' see PARA 305 note 7.

5     The definition of 'employer' for the purposes of the 1998 regulations (see PARA 483 note 1) does not apply for this purpose, or for the purpose of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(3): see reg 2(1).

6     For these purposes, 'work equipment' means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not); and related expressions are to be construed accordingly: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 2(1). The view expressed in *Hammond v Metropolitan Police Comr* [2004] EWCA Civ 830, [2004] ICR 1467, that work equipment does not include items on which an employee is working that are not provided by his employer, has been rejected in *Spencer-Franks v Kellogg Brown and Root Ltd* [2008] UKHL 46, [2009] 1 All ER 269, [2008] ICR 863.

7     For these purposes, 'use' in relation to work equipment means any activity involving work equipment and includes starting, stopping, programming, setting, transporting, repairing, modifying, maintaining, servicing and cleaning; and related expressions are to be construed accordingly: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 2(1).

8     Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(2). As to the meaning of 'employee' see PARA 302 note 4. See *Couzens v T McGee & Co Ltd* [2009] EWCA Civ 95 at [34], [2009] PIQR P260 at [34], [2009] All ER (D) 191 (Feb) at [34], where it was held that an item supplied by an employee for his own use was not covered by the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306. See also *Mason v Satelcom Ltd* [2008] EWCA Civ 494, [2008] ICR 971, [2008] All ER (D) 175 (May); *Smith v Northamptonshire County Council* [2009] UKHL 27, [2009] ICR 734, [2009] All ER (D) 170 (May); *Spencer-Franks v Kellogg Brown and Root Ltd* [2008] UKHL 46, [2009] 1 All ER 269, [2008] ICR 863.

9     As to the meaning of 'self-employed person' PARA 302 note 5.

10    Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(3)(a). See *PRP Architects v Reid* [2006] EWCA Civ 1119, [2007] ICR 78 (employee injured by lift was injured 'at work' even though lift was communal part of building and employee had finished work for the day).

11    As to the meaning of 'hire-purchase agreement' see PARA 531 note 16.

12    Any reference in Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(3)(b) (see head (2) in the text) to a person having control is a reference to a person having control in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): reg 3(4). See *Ball v Street* [2005] EWCA Civ 76, [2005] PIQR P342 (hire of machinery by farmer to neighbouring farmer for reward).

13    Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(3)(b), (5). See *Mason v Satelcom Ltd* [2008] EWCA Civ 494, [2008] ICR 971, [2008] All ER (D) 175 (May) (worker injured after using ladder found on premises; owner of building did not have control to any relevant extent); and *Jennings v Forestry Commission* [2008] EWCA Civ 581, [2008] ICR 988 (claimant worker injured using his own vehicle which was unsuitable; defendant did not have control).

14 For these purposes, 'ship' has the meaning assigned to it by the Merchant Shipping Act 1995 s 313(1) (ie it includes every description of vessel used in navigation) save that it does not include an offshore installation: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(11).

15 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(6).

16 For these purposes, 'merchant shipping requirements' means the requirements of the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988, SI 1988/1636, regs 3, 4 and of the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988, SI 1988/1639, regs 5-10 (revoked: see now the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183; and the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006, SI 2006/2184) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 646): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(11); Interpretation Act 1978 s 17(2).

17 In a case where the merchant shipping requirements are not applicable to the ship's work equipment by reason only that for the time being there is no master, crew or watchman on the ship, those requirements are nevertheless to be treated for the purpose of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(7) as if they were applicable: reg 3(8). 'Master' has the meaning assigned to it by the Merchant Shipping Act 1995 s 313(1) (ie it includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(11).

18 For these purposes, 'shore employer' means an employer of persons (other than the master and crew of any ship) who are engaged in a specified operation: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(11). As to the meaning of 'specified operation' see note 20.

19 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(7).

20 For these purposes, 'specified operation' means an operation in which the ship's work equipment is used (1) by persons other than the master and crew; or (2) where persons other than the master and crew are liable to be exposed to a risk to their health or safety from its use: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(11).

21 Ie the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(6) does not apply to regs 7-9, regs 11-13, regs 20-22 and reg 30 (each as applied by reg 3): reg 3(9).

22 Ie the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(6); see the text and notes 14-15.

23 Ie an activity specified in the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127: see PARA 305.

24 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(10); Interpretation Act 1978 s 17(2).

25 'Home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 36(2)(a).

26 'Visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 36(2)(c).

27 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 36(1). 'Headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 36(2)(b); Interpretation Act 1978 s 17(2).

28 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 36(1).

29 See the Approved Code of Practice on Safe Use of Work Equipment (ACoP L22). As to codes of practice approved by the Health and Safety Executive see PARA 426.

## UPDATE

### 482 Application of the Provision and Use of Work Equipment Regulations 1998

NOTE 8--*Smith*, cited, reported at (2009) 110 BMLR 15.

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### **483. Suitability of work equipment.**

Every employer<sup>1</sup> must ensure that work equipment<sup>2</sup> is so constructed or adapted as to be suitable<sup>3</sup> for the purpose for which it is used or provided<sup>4</sup>.

In selecting work equipment, every employer must have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises<sup>5</sup> or undertaking in which that work equipment is to be used and any additional risk posed by the use of that work equipment<sup>6</sup>. Every employer must ensure that work equipment is used only for operations for which, and under conditions for which, it is suitable<sup>7</sup>.

With regard to items of work equipment provided for use in the premises or undertaking of the employer for the first time after 31 December 1992, every employer must ensure that any such item of work equipment conforms at all times with any essential requirements<sup>8</sup>, other than requirements which, at the time of its being first supplied or put into service in any place in which the 1998 regulations<sup>9</sup> apply, did not apply to work equipment of its type<sup>10</sup>.

1 For these purposes, 'employer' (except in the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(2), (3): see PARA 482) includes a person to whom the requirements imposed by the 1998 regulations apply by virtue of reg 3(3)(a), (b) (see PARA 482): reg 2(1). As to the application of the 1998 regulations see PARA 482.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 For these purposes, 'suitable', subject to the following provision, means suitable in any respect which it is reasonably foreseeable will affect the health or safety of any person; and, in relation to (1) an offensive weapon within the meaning of the Prevention of Crime Act 1953 s 1(4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 699) provided for use as self-defence or as deterrent equipment; and (2) work equipment provided for use for arrest or restraint, by a person who holds the office of constable or an appointment as police cadet, means suitable in any respect which it is reasonably foreseeable will affect the health or safety of such person: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 4(4) (substituted by SI 1999/860). The cost of equipment may be relevant to its suitability: see *Skinner v Scottish Ambulance Service* 2004 SC (D) 25/3, Ct of Sess (OH); revsd 2004 SLT 834, Ct of Sess (IH). As to reasonable foreseeability see eg *Yorkshire Traction Co Ltd v Searby* [2003] EWCA Civ 1856, 148 Sol Jo LB 61, [2003] All ER (D) 409 (Dec) (no screen in bus to separate driver from passengers; claimant bus driver was assaulted by passenger and suffered from post-traumatic stress disorder; on appeal the court was unable to conclude that the bus driven by the claimant was unsuitable for use).

Work equipment is not to be regarded as unsuitable for these purposes when injury has resulted from inadequate control or mishandling by an employee of otherwise safe and suitable equipment: *Griffiths v Vauxhall Motors Ltd* [2003] EWCA Civ 412, [2003] All ER (D) 167 (Mar).

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 4(1). As to the meaning of 'use' see PARA 482 note 7.

5 As to the meaning of 'premises' see PARA 302 note 6.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 4(2).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 4(3).

8 For these purposes, 'essential requirements', in relation to an item of work equipment, means requirements relating to the design and construction of work equipment of its type in any of the instruments listed in the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, Sch 1 (being instruments which give effect to Community directives concerning the safety of products): regs 2(1), 10(2) (reg 10(2))



substituted by SI 2002/2174). The relevant instruments are: (1) the Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1985, SI 1985/1968 (now revoked and replaced by SI 2001/1701: see head (19) below); (2) the Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1988, SI 1988/361 (now revoked and replaced by SI 2001/1701: see head (19) below); (3) the Electro-medical Equipment (EEC Requirements) Regulations 1988, SI 1988/1586 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 517); (4) the Low Voltage Electrical Equipment (Safety) Regulations 1989, SI 1989/728 (now revoked with savings and replaced by SI 1994/3260: see head (14) below); (5) the Construction Products Regulations 1991, SI 1991/1620 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 754-755); (6) the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749 (see PARA 551 et seq); (7) the Lawnmowers (Harmonisation of Noise Emission Standards) Regulations 1992, SI 1992/168 (now revoked and replaced by SI 2001/1701: see head (19) below); (8) the Gas Appliances (Safety) Regulations 1992, SI 1992/711 (now revoked and replaced by SI 1995/1629: see head (15) below); (9) the Electromagnetic Compatibility Regulations 1992, SI 1992/2372 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 553); (10) the Supply of Machinery (Safety) Regulations 1992, SI 1992/3073 (revoked as from 29 December 2009 and replaced by the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597: see head (21) below; and PARA 533 note 2); (11) the Personal Protective Equipment (EC Directive) Regulations 1992, SI 1992/3139 (now revoked and replaced by the Personal Protective Equipment Regulations 2002, SI 2002/1144: see PARAS 567-568); (12) the Active Implantable Medical Devices Regulations 1992, SI 1992/3146 (now revoked and replaced by the Medical Devices Regulations 2002, SI 2002/618: see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 621-622); (13) the Medical Devices Regulations 1994, SI 1994/3017 (now revoked and replaced by SI 2002/618: see head (12) above); (14) the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1148; **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 602); (15) the Gas Appliances (Safety) Regulations 1995, SI 1995/1629 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 612 et seq); (16) the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192 (see PARA 569); (17) the Lifts Regulations 1997, SI 1997/831 (see PARA 562 et seq); (18) the Pressure Equipment Regulations 1999, SI 1999/2001 (see PARA 558 et seq); (19) the Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001, SI 2001/1701 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 53); (20) the Cableway Installations Regulations 2004, SI 2004/129 (see PARA 582); (21) the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597 (see PARA 533 et seq); Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, Sch 1 (amended by SI 1999/2001; SI 2001/1701; SI 2004/129; SI 2005/830; SI 2005/831; and, as from 29 December 2009, SI 2008/1597).

9     le the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see PARA 482; the text and notes 1-8, 10; and PARA 484 et seq.

10    Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 10(1), (3) (reg 10(1) substituted by SI 2002/2174).

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**484. Maintenance and inspection; maintenance operations.**

Every employer<sup>1</sup> must ensure that:

- 476 (1) work equipment<sup>2</sup> is maintained in an efficient state, in efficient working order and in good repair<sup>3</sup>;
- 477 (2) where any machinery has a maintenance log, the log is kept up to date<sup>4</sup>;
- 478 (3) where the safety of work equipment depends on the installation conditions, it is inspected<sup>5</sup>:
- 77
- 129. (a) after installation and before being put into service for the first time; or
- 130. (b) after assembly at a new site or in a new location,
- 78
- 479 to ensure that it has been installed correctly and is safe to operate<sup>6</sup>;
- 480 (4) work equipment exposed to conditions causing deterioration which is liable to result in dangerous situations is inspected:
- 79
- 131. (a) at suitable intervals; and
- 132. (b) each time that exceptional circumstances which are liable to jeopardise the safety of the work equipment have occurred,
- 80
- 481 to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time<sup>7</sup>;
- 482 (5) the result of an inspection made under the above provisions is recorded and kept until the next such inspection is recorded<sup>8</sup>;
- 483 (6) no work equipment leaves his undertaking or, if obtained from the undertaking of another person, is used in his undertaking, unless it is accompanied by physical evidence that the last such inspection required to be carried out has been carried out<sup>9</sup>.

Heads (3) to (6) above do not, however, apply to:

- 484 (i) certain power presses<sup>10</sup>;
- 485 (ii) a guard or protection device for the tools of such a power press;
- 486 (iii) work equipment for lifting loads including persons<sup>11</sup>;
- 487 (iv) certain winding apparatus in mines<sup>12</sup>;
- 488 (v) work equipment required to be inspected by specific provisions<sup>13</sup> relating to the construction industry;
- 489 (vi) work equipment to which the health and safety requirements with respect to work at height<sup>14</sup> apply<sup>15</sup>.

Subject to that, they impose an absolute duty for equipment to be in good repair<sup>16</sup>.

Every employer must take appropriate measures to ensure that work equipment is so constructed or adapted that, so far as is reasonably practicable<sup>17</sup>, maintenance operations

which involve a risk to health or safety can be carried out while the work equipment is shut down, or in other cases:

- 490 (A) maintenance operations can be carried out without exposing the person carrying them out to a risk to his health or safety; or
- 491 (B) appropriate measures can be taken for the protection of any person carrying out maintenance operations which involve a risk to his health or safety<sup>18</sup>.

1 As to the meaning of 'employer' see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 5(1). As to the application of the 1998 regulations see PARA 482. See eg *Green v Yorkshire Traction Co Ltd* [2001] EWCA Civ 1925, [2001] All ER (D) 43 (Dec) (claimant bus driver slipped on wet step when leaving bus at the end of his shift and injured his back; held on appeal that, although the bus was work equipment, the duty to maintain it in an efficient state was not an absolute one and it was not possible to conclude that a bus was not maintained in an efficient state simply because there was water on a step as result of passengers getting on and off the bus); and *Smith v Northamptonshire County Council* [2009] UKHL 27, [2009] ICR 734, [2009] All ER (D) 170 (May) (a specific nexus, beyond the mere fact of use, is required between the equipment and the employer's undertaking before the employer comes under the strict responsibilities imposed by the 1998 regulations; hence, an employer had no duty in respect of a ramp, installed by others, used mostly by people other than employees and which the employer had no right or responsibility to maintain, even if use by an employee gave rise to common law obligation to check it was in good repair). The Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 5 deals with the efficiency of work equipment in terms of health and safety and not from the point of view of productivity or economy: *Ball v Street* [2005] EWCA Civ 76, [2005] PIQR P342.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 5(2).

5 'Inspection', in relation to an inspection under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(1) or (2) (see heads (3)-(4) in the text): (1) means such visual or more rigorous inspection by a competent person as is appropriate for the purpose described in the relevant provision; (2) where it is appropriate to carry out testing for the purpose, includes testing the nature and extent of which are appropriate for the purpose; and related expressions are to be construed accordingly: reg 2(1).

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(1).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(2).

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(3).

9 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(4).

10 The power presses to which the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, regs 32-35 apply: see PARA 500 et seq.

11 As to the inspection requirements in respect of lifting equipment see PARA 520.

12 The winding apparatus to which the Mines (Shafts and Winding) Regulations 1993, SI 1993/302, apply: see PARA 772.

13 The by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(4) or 32(2): see PARAS 687-688.

14 The work equipment to which the Work at Height Regulations 2005, SI 2005/735, reg 12 applies: see PARA 588.

15 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 6(5) (amended by SI 2005/735 and SI 2007/320).

16 See *Stark v Post Office* [2000] ICR 1013, [2000] All ER (D) 276, CA.

17 As to what is 'reasonably practicable' see PARA 417.

18 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 22.

**UPDATE**

**484 Maintenance and inspection; maintenance operations**

NOTE 3--*Smith*, cited, reported at (2009) 110 BMLR 15.

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**485. Specific risks.**

Where the use<sup>1</sup> of work equipment<sup>2</sup> is likely to involve a specific risk to health or safety, every employer<sup>3</sup> must ensure that:

- 492 (1) the use of that work equipment is restricted to those persons given the task of using it; and
- 493 (2) repairs, modifications, maintenance or servicing of that work equipment is restricted to those persons who have been specifically designated to perform operations of that description, whether or not also authorised to perform other operations<sup>4</sup>.

The employer must further ensure that the persons designated for the purposes of head (2) above have received adequate training related to any operations in respect of which they have been so designated<sup>5</sup>.

1 As to the meaning of 'use' see PARA 482 note 7.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 As to the meaning of 'employer' see PARA 483 note 1.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 7(1). As to the application of the 1998 regulations see PARA 482.

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 7(2).

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#### **486. Information and instructions.**

Every employer<sup>1</sup> must ensure that:

- 494 (1) all persons who use<sup>2</sup> work equipment<sup>3</sup> have available to them adequate health and safety information and, where appropriate, written instructions pertaining to the use of the work equipment<sup>4</sup>;
- 495 (2) any of his employees<sup>5</sup> who supervises or manages the use of work equipment has available to him adequate health and safety information and, where appropriate, written instructions pertaining to the use of the work equipment<sup>6</sup>.

Information and instructions so required must be readily comprehensible to those concerned<sup>7</sup>. Furthermore, the information and instructions required by either head (1) or head (2) above must<sup>8</sup> include information and, where appropriate, written instructions on:

- 496 (a) the conditions in which and the methods by which the work equipment may be used;
- 497 (b) foreseeable abnormal situations and the action to be taken if such a situation were to occur; and
- 498 (c) any conclusions to be drawn from experience in using the work equipment<sup>9</sup>.

1 As to the meaning of 'employer' see PARA 483 note 1.

2 As to the meaning of 'use' see PARA 482 note 7.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 8(1). As to the application of the 1998 regulations see PARA 482.

5 As to the meaning of 'employee' see PARA 302 note 4.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 8(2).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 8(4).

8 Ie without prejudice to the generality of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 8(1) or (2): reg 8(3).

9 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 8(3).

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#### **487. Training.**

Every employer<sup>1</sup> must ensure that:

- 499 (1) all persons who use<sup>2</sup> work equipment<sup>3</sup> have received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and precautions to be taken<sup>4</sup>;
- 500 (2) any of his employees<sup>5</sup> who supervises or manages the use of work equipment has received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and precautions to be taken<sup>6</sup>.

An employer has additional responsibilities for general health and safety training, which have already been discussed<sup>7</sup>.

There is an approved code of practice for the training of forklift truck operators<sup>8</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'use' see PARA 482 note 7.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 9(1). As to the application of the 1998 regulations see PARA 482.

5 As to the meaning of 'employee' see PARA 302 note 4.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 9(2). Regulation 9 obliges employers to investigate the potential risks associated with the correct use of work equipment, not merely to deal with those risks which are apparent: *Allison v London Underground Ltd* [2008] EWCA Civ 71, [2008] ICR 719, [2008] IRLR 440.

7 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13; and PARA 443.

8 As to codes of practice approved by the Health and Safety Executive see PARA 426.

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**488. Dangerous parts of machinery.**

Every employer<sup>1</sup> must ensure that measures are taken which are effective:

- 501 (1) to prevent access to any dangerous part of machinery or to any rotating stock-bar<sup>2</sup>; or
- 502 (2) to stop the movement of any dangerous part of machinery or rotating stock-bar before any part of a person enters a danger zone<sup>3</sup>.

The measures so required are to consist of:

- 503 (a) the provision of fixed guards enclosing every dangerous part or rotating stock-bar where and to the extent that it is practicable<sup>4</sup> to do so, but where or to the extent that it is not, then
- 504 (b) the provision of other guards or protection devices where and to the extent that it is practicable to do so, but where or to the extent that it is not, then
- 505 (c) the provision of jigs, holders, push-sticks or similar protection appliances used in conjunction with the machinery where and to the extent that it is practicable to do so,

and the provision of such information, instruction, training and supervision as is necessary<sup>5</sup>. All guards and protection devices provided under head (a) or head (b) above must:

- 506 (i) be suitable for the purpose for which they are provided;
- 507 (ii) be of good construction, sound material and adequate strength;
- 508 (iii) be maintained in an efficient state, in efficient working order and in good repair;
- 509 (iv) not give rise to any increased risk to health or safety;
- 510 (v) not be easily bypassed or disabled;
- 511 (vi) be situated at sufficient distance from the danger zone;
- 512 (vii) not unduly restrict the view of the operating cycle of the machinery, where such a view is necessary;
- 513 (viii) be so constructed or adapted that they allow operations necessary to fit or replace parts and for maintenance work, restricting access so that it is allowed only to the area where the work is to be carried out and, if possible, without having to dismantle the guard or protection device<sup>6</sup>;

and all protection appliances provided under head (c) above must comply with heads (i) to (v) and (vii) above<sup>7</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 For these purposes, 'stock-bar' means any part of a stock-bar which projects beyond the head-stock of a lathe: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11(5). As to the application of the 1998 regulations see PARA 482.



3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11(1). For these purposes, 'danger zone' means any zone in or around machinery in which a person is exposed to a risk to health or safety from contact with a dangerous part of machinery or a rotating stock-bar: reg 11(5).

4 As to the meaning of 'practicable' see PARA 417.

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11(2) (substituted by SI 2002/2174).

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11(3).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11(4).

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#### **489. Protection against specified hazards.**

Every employer<sup>1</sup> must take measures to ensure that the exposure of a person using<sup>2</sup> work equipment<sup>3</sup> to any risk to his health or safety from any specified hazard<sup>4</sup> is either prevented, or, where that is not reasonably practicable<sup>5</sup>, adequately<sup>6</sup> controlled<sup>7</sup>. The measures so required are to be measures other than the provision of personal protective equipment or of information, instruction, training and supervision, so far as is reasonably practicable<sup>8</sup>. They must include, where appropriate, measures to minimise the effects of the hazard as well as to reduce the likelihood of the hazard occurring<sup>9</sup>.

The specified hazards are:

- 514 (1) any article or substance<sup>10</sup> falling or being ejected from work equipment;
- 515 (2) rupture or disintegration of parts of work equipment;
- 516 (3) work equipment catching fire or overheating;
- 517 (4) the unintended or premature discharge of any article or of any gas, dust, liquid, vapour or other substance which, in each case, is produced, used or stored in the work equipment;
- 518 (5) the unintended or premature explosion of the work equipment or any article or substance produced, used or stored in it<sup>11</sup>.

The above provisions do not, however, apply where any of the regulations relating to ionising radiations<sup>12</sup>, the control of asbestos at work<sup>13</sup>, the control of substances hazardous to health<sup>14</sup>, noise at work<sup>15</sup>, head protection in the construction industry<sup>16</sup>, the control of lead at work<sup>17</sup> or the control of vibration at work<sup>18</sup> apply in respect of any risk to a person's health or safety for which such regulations require measures to be taken to prevent or control that risk<sup>19</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'use' see PARA 482 note 7.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 I.e. a hazard specified in the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(3): see heads (1)-(5) in the text.

5 As to the meaning of 'reasonably practicable' see PARA 417.

6 For these purposes, 'adequately' means adequately having regard only to the nature of the hazard and the nature and degree of exposure to the risk: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(4). As to the application of the 1998 regulations see PARA 482.

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(1).

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(2)(a).

9 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(2)(b).

10 As to the meaning of 'substance' see PARA 302 note 7.

11 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(3).

- 12    le the Ionising Radiations Regulations 1999, SI 1999/3232: see PARA 648 et seq.
- 13    le the Control of Asbestos Regulations 2006, SI 2006/2739: see PARA 630 et seq.
- 14    le the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARA 619 et seq.
- 15    le the Control of Noise at Work Regulations 2005, SI 2005/1643: see PARA 611 et seq.
- 16    le the Construction (Head Protection) Regulations 1989, SI 1989/2209: see PARA 698.
- 17    le the Control of Lead at Work Regulations 2002, SI 2002/2676: see PARA 641 et seq.
- 18    le the Control of Vibration at Work Regulations 2005, SI 2005/1093: see PARA 596 et seq.
- 19    Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 12(5) (amended by SI 2005/1093; SI 2006/2739; and by virtue of SI 2005/1643); Interpretation Act 1978 s 17(2).

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**490. High or very low temperature.**

Every employer<sup>1</sup> must ensure that work equipment<sup>2</sup>, parts of work equipment and any article or substance<sup>3</sup> produced, used<sup>4</sup> or stored in work equipment which, in each case, is at a high or very low temperature has protection where appropriate so as to prevent injury to any person by burn, scald or sear<sup>5</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 As to the meaning of 'substance' see PARA 302 note 7.

4 As to the meaning of 'use' see PARA 482 note 7.

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 13. As to the application of the 1998 regulations see PARA 482.

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#### **491. Controls and control systems.**

Every employer<sup>1</sup> must ensure that, where appropriate<sup>2</sup>, work equipment<sup>3</sup> is provided with:

- 519 (1) one or more controls for the purposes of:
- 81 133. (a) starting the work equipment, including re-starting after a stoppage for any reason; or
- 134. (b) controlling any change in the speed, pressure or other operating conditions of the work equipment where such conditions after the change result in risk to health and safety which is greater than or of a different nature from such risks before the change<sup>4</sup>;
- 82 520 (2) one or more readily accessible controls the operation of which will bring the work equipment to a safe condition in a safe manner<sup>5</sup>;
- 521 (3) one or more readily accessible emergency stop controls unless it is not necessary by reason of the nature of the hazards and the time taken for the work equipment to come to a complete stop as a result of the action of any control provided by virtue of head (2) above<sup>6</sup>.

Every employer must ensure that all controls for work equipment are clearly visible and identifiable, including by appropriate marking where necessary<sup>7</sup>. Except where necessary, the employer must ensure that no control for work equipment is in a position where any person operating the control is exposed to a risk to his health or safety<sup>8</sup>. Furthermore, every employer must ensure where appropriate:

- 522 (i) that, so far as is reasonably practicable<sup>9</sup>, the operator of any control is able to ensure from the position of that control that no person is in a place where he would be exposed to any risk to his health or safety as a result of the operation of that control, but where or to the extent that it is not reasonably practicable,
- 523 (ii) that, so far as is reasonably practicable, systems of work are effective to ensure that, when work equipment is about to start, no person is in a place where he would be exposed to a risk to his health or safety as a result of the work equipment starting, but where neither of these is reasonably practicable,
- 524 (iii) that an audible, visible or other suitable warning is given<sup>10</sup> whenever work equipment is about to start<sup>11</sup>.

Every employer must take appropriate measures to ensure that any person who is in a place where he would be exposed to a risk to his health or safety as a result of the starting or stopping of work equipment has sufficient time and suitable means to avoid that risk<sup>12</sup>.

Every employer must ensure, so far as is reasonably practicable, that all control systems of work equipment are safe<sup>13</sup> and are chosen making due allowance for the failures, faults and constraints to be expected in the planned circumstances of use<sup>14</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 The Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 14(1) (see head (1) in the text) does not apply to re-starting or changing operating conditions as a result of the normal operating cycle of an automatic device: reg 14(3). As to the application of the 1998 regulations see PARA 482.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 14(1). Subject to reg 14(3) (see note 2), every employer must ensure that, where a control is required by reg 14(1), it is not possible to perform any operation mentioned in reg 14(1)(a) or (b) (see heads (1)(a), (b) in the text) except by a deliberate action on such control: reg 14(2).

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 15(1). Any control so required (1) must bring the work equipment to a complete stop where necessary for reasons of health and safety (reg 15(2)); (2) must, if necessary for reasons of health and safety, switch off all sources of energy after stopping the functioning of the work equipment (reg 15(3)); and (3) must operate in priority to any control which starts or changes the operating conditions of the work equipment (reg 15(4)).

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 16(1). Any control so required must operate in priority to any control required by reg 15(1): reg 16(2).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 17(1).

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 17(2).

9 As to the meaning of 'reasonably practicable' see PARA 417.

10 Ie by virtue of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 24: see PARA 495.

11 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 17(3).

12 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 17(4).

13 Without prejudice to the generality of the provision set out in the text, a control system is not safe unless (1) its operation does not create any increased risk to health or safety; (2) it ensures, so far as is reasonably practicable, that any fault in or damage to any part of the control system or the loss of supply of any source of energy used by the work equipment cannot result in additional or increased risk to health or safety; (3) it does not impede the operation of any control required by the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 15 or reg 16 (see heads (2), (3) in the text): reg 18(2).

14 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 18(1) (substituted by SI 2002/2174).

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**492. Isolation from sources of energy.**

Every employer<sup>1</sup> must ensure that where appropriate work equipment<sup>2</sup> is provided with suitable means<sup>3</sup> to isolate it from all its sources of energy<sup>4</sup>.

Every employer must also take appropriate measures to ensure that re-connection of any energy source to work equipment does not expose any person using<sup>5</sup> the work equipment to any risk to his health or safety<sup>6</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 Without prejudice to the generality of the provision set out in the text, the means are not to be suitable unless they are clearly identifiable and readily accessible: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 19(2). As to the application of the 1998 regulations see PARA 482.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 19(1).

5 As to the meaning of 'use' see PARA 482 note 7.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 19(3).

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**493. Stability of work equipment.**

Every employer<sup>1</sup> must ensure that work equipment<sup>2</sup> or any part of work equipment is stabilised by clamping or otherwise where necessary for purposes of health or safety<sup>3</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 20. As to the stability of the workplace itself see PARA 460. As to the application of the 1998 regulations see PARA 482. As to the meaning of 'necessary' see *Robb v Salamis (M & I) Ltd* [2006] UKHL 56, [2007] 2 All ER 97, [2007] ICR 175 (necessary to clamp ladder connecting bunks in workers' accommodation).



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#### **494. Lighting.**

Every employer<sup>1</sup> must ensure that suitable and sufficient lighting, which takes account of the operations to be carried out, is provided at any place where a person uses<sup>2</sup> work equipment<sup>3</sup>. This requirement is in addition to the general duty to provide suitable lighting in the workplace<sup>4</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'use' see PARA 482 note 7.

3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 21. As to the meaning of 'work equipment' see PARA 482 note 6. As to the application of the 1998 regulations see PARA 482.

4 See the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 8; and PARA 463.

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**495. Markings and warnings.**

Every employer<sup>1</sup> must ensure that work equipment<sup>2</sup>:

525 (1) is marked in a clearly visible manner with any marking appropriate for reasons of health and safety<sup>3</sup>;

526 (2) incorporates any warnings or warning devices which are appropriate<sup>4</sup> for reasons of health and safety<sup>5</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 23. As to the application of the 1998 regulations see PARA 482.

4 Without prejudice to the generality of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 24(1) (see head (2) in the text), warnings given by warning devices on work equipment are not to be appropriate unless they are unambiguous, easily perceived and easily understood: reg 24(2).

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 24(1). As to safety signs see further PARA 445.

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## ***B. MOBILE WORK EQUIPMENT***

### **496. Employees carried on mobile work equipment.**

Every employer<sup>1</sup> must ensure that no employee<sup>2</sup> is carried by mobile work equipment<sup>3</sup> unless it is suitable for carrying persons<sup>4</sup> and it incorporates features for reducing to as low as is reasonably practicable<sup>5</sup> risks to their safety, including risks from wheels or tracks<sup>6</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 25(a). As to the application of the 1998 regulations see PARA 482.

5 As to the meaning of 'reasonably practicable' see PARA 417.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 25(b).

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**497. Rolling over of mobile work equipment; overturning of forklift trucks.**

Every employer<sup>1</sup> must ensure that where there is a risk to an employee<sup>2</sup> riding on mobile work equipment<sup>3</sup> from its rolling over, it is minimised by:

- 527 (1) stabilising the work equipment;
- 528 (2) a structure which ensures that the work equipment does no more than fall on its side;
- 529 (3) a structure giving sufficient clearance to anyone being carried if it overturns further than that; or
- 530 (4) a device giving comparable protection<sup>4</sup>.

Where there is a risk of anyone being carried by mobile work equipment being crushed by its rolling over, the employer must ensure that it has a suitable restraining system for him<sup>5</sup>. Compliance with the above provisions is not, however, required where:

- 531 (a) it would increase the overall risk to safety;
- 532 (b) it would not be reasonably practicable<sup>6</sup> to operate the mobile work equipment in consequence; or
- 533 (c) in relation to an item of work equipment provided for use<sup>7</sup> in the undertaking or establishment before 5 December 1998 it would not be reasonably practicable<sup>8</sup>.

Nor do the above provisions apply to a forklift truck having a structure described in head (2) or head (3) above<sup>9</sup>. Every employer must, however, ensure that such a forklift truck which carries an employee is adapted or equipped to reduce to as low as is reasonably practicable the risk to safety from its overturning<sup>10</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'work equipment' see PARA 482 note 6.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 26(1). As to the application of the 1998 regulations see PARA 482.

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 26(2).

6 As to the meaning of 'reasonably practicable' see PARA 417.

7 As to the meaning of 'use' see PARA 482 note 7.

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 26(4).

9 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 26(3).

10 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 27.



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#### **498. Self-propelled work equipment.**

Every employer<sup>1</sup> must ensure that, where self-propelled work equipment<sup>2</sup> may, while in motion, involve risk to the safety of persons:

- 534 (1) it has facilities for preventing its being started by an unauthorised person;
- 535 (2) it has appropriate facilities for minimising the consequences of a collision where there is more than one item of rail-mounted work equipment in motion at the same time;
- 536 (3) it has a device for braking and stopping;
- 537 (4) where safety constraints so require, emergency facilities operated by readily accessible controls or automatic systems are available for braking and stopping the work equipment in the event of failure of the main facility;
- 538 (5) where the driver's direct field of vision is inadequate to ensure safety, there are adequate devices for improving his vision so far as is reasonably practicable<sup>3</sup>;
- 539 (6) if provided for use<sup>4</sup> at night or in dark places:
- 83 135. (a) it is equipped with lighting appropriate to the work to be carried out; and
- 136. (b) is otherwise sufficiently safe for such use;
- 84 540 (7) if it, or anything carried or towed by it, constitutes a fire hazard and is liable to endanger employees<sup>5</sup>, it carries appropriate fire-fighting equipment, unless such equipment is kept sufficiently close to it<sup>6</sup>.

Every employer must ensure that where remote-controlled self-propelled work equipment involves a risk to safety while in motion:

- 541 (i) it stops automatically once it leaves its control range; and
- 542 (ii) where the risk is of crushing or impact it incorporates features to guard against such risk unless other appropriate devices are able to do so<sup>7</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'work equipment' see PARA 482 note 6.

3 As to the meaning of 'reasonably practicable' see PARA 417.

4 As to the meaning of 'use' see PARA 482 note 7.

5 As to the meaning of 'employee' see PARA 302 note 4.

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 28. As to the application of the 1998 regulations see PARA 482.

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 29.

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**499. Drive shafts.**

Where the seizure of the drive shaft between mobile work equipment<sup>1</sup> and its accessories or anything towed is likely to involve a risk to safety every employer<sup>2</sup> must:

- 543 (1) ensure that the work equipment has a means of preventing such seizure; or
- 544 (2) where such seizure cannot be avoided, take every possible measure to avoid an adverse effect on the safety of an employee<sup>3</sup>.

Every employer must ensure that:

- 545 (a) where mobile work equipment has a shaft for the transmission of energy between it and other mobile work equipment; and
- 546 (b) the shaft could become soiled or damaged by contact with the ground while uncoupled,

the work equipment has a system for safeguarding the shaft<sup>4</sup>.

1 As to the meaning of 'work equipment' see PARA 482 note 6.

2 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

3 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 30(1). As to the meaning of 'employee' see PARA 302 note 4. As to the application of the 1998 regulations see PARA 482.

4 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 30(2).

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### **C. POWER PRESSES**

#### **500. Application of regulations concerning power presses.**

The Provision and Use of Work Equipment Regulations 1998<sup>1</sup>, whose provisions with regard to work equipment generally have already been discussed<sup>2</sup>, make particular provision with regard to power presses<sup>3</sup>. 'Power press' means a press or press brake for the working of metal by means of tools, or for die proving, which is power driven and which embodies a flywheel and clutch<sup>4</sup>. The following types of power presses are, however, excluded from the requirements of that particular provision:

- 547 (1) a power press for the working of hot metal;
- 548 (2) a power press not capable of a stroke greater than 6 mm;
- 549 (3) a guillotine;
- 550 (4) a combination punching and shearing machine, turret punch press or similar machine for punching, shearing or cropping;
- 551 (5) a machine, other than a press brake, for bending steel sections;
- 552 (6) a straightening machine;
- 553 (7) an upsetting machine;
- 554 (8) a heading machine;
- 555 (9) a riveting machine;
- 556 (10) an eyeletting machine;
- 557 (11) a press-stud attaching machine;
- 558 (12) a zip fastener bottom stop attaching machine;
- 559 (13) a stapling machine;
- 560 (14) a wire stitching machine;
- 561 (15) a power press for the compacting of metal powders<sup>5</sup>.

1. See the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306. As to the application of the 1998 regulations see PARA 482.

2. See the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, Pts I-III, V (regs 1-30, 36-39); and PARA 482 et seq.

3. See the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, Pt IV (regs 31-35); the text and notes 4-5; and PARA 501 et seq.

4. Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 2(1).

5. Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 31, Sch 2.



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**501. Thorough examination of power presses, guards and protection devices.**

Every employer<sup>1</sup> must ensure:

- 562 (1) that a power press<sup>2</sup> is not put into service for the first time after installation, or after assembly at a new site or in a new location unless:
  - 85 137. (a) it has been thoroughly examined<sup>3</sup> to ensure that it has been installed correctly and would be safe to operate; and
  - 138. (b) any defect<sup>4</sup> has been remedied<sup>5</sup>;
- 86 563 (2) that a guard, other than that part of a closed tool which acts as a fixed guard, or protection device is not put into service for the first time on a power press unless:
  - 87 139. (a) it has been thoroughly examined when in position on that power press to ensure that it is effective for its purpose; and
  - 140. (b) any defect has been remedied<sup>6</sup>;
- 88 564 (3) that that part of a closed tool which acts as a fixed guard is not used on a power press unless:
  - 89 141. (a) it has been thoroughly examined when in position on any power press in the premises to ensure that it is effective for its purpose; and
  - 142. (b) any defect has been remedied<sup>7</sup>.
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For the purpose of ensuring that health and safety conditions are maintained, and that any deterioration can be detected and remedied in good time, every employer must ensure that:

- 565 (i) every power press is thoroughly examined, and its guards and protection devices are thoroughly examined when in position on that power press:
  - 91 143. (A) at least every 12 months, where it has fixed guards only; or
  - 144. (B) at least every six months, in other cases; and
  - 145. (C) each time that exceptional circumstances have occurred which are liable to jeopardise the safety of the power press or its guards or protection devices; and
- 92 566 (ii) any defect is remedied before the power press is used again<sup>8</sup>.

Heads (i) and (ii) above do not, however, apply to that part of a closed tool which acts as a fixed guard<sup>9</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'power press', and as to the power presses excluded from the requirements set out in the text, see PARA 500.

3 'Thorough examination' in relation to a thorough examination under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(1), (2), (3) or (4) (see heads (1)-(3), (i)-(ii) in the text), (1) means a thorough examination by a competent person; (2) includes testing the nature and extent of which are appropriate for the purpose described in the relevant provision; and related expressions are to be construed accordingly: reg 2(1). As to the application of the 1998 regulations see PARA 482.

4 For these purposes, 'defect' means a defect notified under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 34 (see PARA 503) other than a defect which has not yet become a danger to persons: reg 32(7).

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(1).

6 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(2).

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(3).

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(4). Where a power press, guard or protection device was before 5 December 1998 (see reg 1) required to be thoroughly examined by the Power Presses Regulations 1965, SI 1965/1441, reg 5(2) (revoked) the first thorough examination under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(4) was to be made before the date by which a thorough examination would have been required by the Power Presses Regulations 1965, SI 1965/1441, reg 5(2) (revoked) had it remained in force: Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(5).

9 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32(6).

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## **502. Inspection of guards and protection devices.**

Every employer<sup>1</sup> must ensure:

567 (1) that a power press<sup>2</sup> is not used<sup>3</sup> after the setting, re-setting or adjustment of its tools, save in trying out its tools or save in die proving, unless:

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146. (a) its every guard and protection device has been inspected and tested while in position on the power press by a person appointed in writing by the employer who is either competent or undergoing training for that purpose and acting under the immediate supervision of a competent person, and who has signed a certificate which complies with the prescribed requirements<sup>4</sup>; or

147. (b) the guards and protection devices have not been altered or disturbed in the course of the adjustment of its tools<sup>5</sup>;

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568 (2) that a power press is not used after the expiration of the fourth hour of a working period<sup>6</sup> unless its every guard and protection device has been inspected and tested while in position on the power press by a person appointed in writing by the employer who is either competent or undergoing training for that purpose and acting under the immediate supervision of a competent person, and who has signed a certificate which complies with the prescribed requirements<sup>7</sup>.

Such a certificate as is referred to above must:

569 (i) contain sufficient particulars to identify every guard and protection device inspected and tested and the power press on which it was positioned at the time of the inspection and test;

570 (ii) state the date and time of the inspection and test; and

571 (iii) state that every guard and protection device on the power press is in position and effective for its purpose<sup>8</sup>.

1 As to the meaning of 'employer' for these purposes see PARA 483 note 1.

2 As to the meaning of 'power press', and as to the power presses excluded from the requirements set out in the text, see PARA 500.

3 As to the meaning of 'use' see PARA 482 note 7.

4 I.e a certificate which complies with the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33(3): see heads (i)-(iii) in the text.

5 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33(1). As to the application of the 1998 regulations see PARA 482.

6 For these purposes, 'working period', in relation to a power press, means (1) the period in which the day's or night's work is done; or (2) in premises where a shift system is in operation, a shift: reg 33(4). As to the meaning of 'premises' see PARA 302 note 6.

7 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33(2).

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33(3).

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### **503. Reports and records.**

A person making a thorough examination<sup>1</sup> for an employer<sup>2</sup> must:

- 572 (1) notify the employer forthwith of any defect in a power press<sup>3</sup> or its guard or protection device which in his opinion is or could become a danger to persons;
- 573 (2) as soon as is practicable<sup>4</sup> make a report of the thorough examination to the employer in writing authenticated by him or on his behalf by signature or equally secure means and containing the specified information<sup>5</sup>; and
- 574 (3) where there is in his opinion a defect in a power press or its guard or protection device which is or could become a danger to persons, send a copy of the report as soon as is practicable to the enforcing authority<sup>6</sup> for the premises<sup>7</sup> in which the power press is situated<sup>8</sup>.

A person making an inspection and test<sup>9</sup> for an employer must forthwith notify the employer of any defect in a guard or protection device which in his opinion is or could become a danger to persons and the reason for his opinion<sup>10</sup>.

Every employer must ensure that the information in every report made pursuant to heads (1) to (3) above is kept available for inspection for two years after it is made<sup>11</sup>. He must also ensure that a certificate that every guard and protective device has been inspected and tested<sup>12</sup> is kept available for inspection:

- 575 (a) at or near the power press to which it relates until superseded by a later certificate; and
- 576 (b) after that, until six months have passed since it was signed<sup>13</sup>.

1    le under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 32: see PARA 501.

2    As to the meaning of 'employer' for these purposes see PARA 483 note 1.

3    As to the meaning of 'power press', and as to the power presses excluded from the requirements set out in the text, see PARA 500.

4    As to the meaning of 'practicable' see PARA 417.

5    The specified information is as follows: (1) the name of the employer for whom the thorough examination was made; (2) the address of the premises at which the thorough examination was made; (3) in relation to each item examined: (a) that it is a power press, interlocking guard, fixed guard or other type of guard or protection device; (b) where known its make, type and year of manufacture; (c) the identifying mark of (i) the manufacturer; (ii) the employer; (4) in relation to the first thorough examination of a power press after installation or after assembly at a new site or in a new location: (a) that it is such thorough examination; (b) either that it has been installed correctly and would be safe to operate or the respects in which it has not been installed correctly or would not be safe to operate; (c) identification of any part found to have a defect, and a description of the defect; (5) in relation to a thorough examination of a power press other than one to which head (4) above relates: (a) that it is such other thorough examination; (b) either that the power press would be safe to operate or the respects in which it would not be safe to operate; (c) identification of any part found to have a defect which is or could become a danger to persons, and a description of the defect; (6) in relation to a thorough examination of a guard or protection device: (a) either that it is effective for its purpose or the respects in which it is not effective for its purpose; (b) identification of any part found to have a defect which is or could become a danger to persons, and a description of the defect; (7) any repair, renewal or alteration

required to remedy a defect found to be a danger to persons; (8) in the case of a defect which is not yet but could become a danger to persons: (a) the time by which it could become such danger; (b) any repair, renewal or alteration required to remedy it; (9) any other defect which requires remedy; (10) any repair, renewal or alteration referred to in head (7) above which has already been effected; (11) the date on which any defect referred to in head (8) above was notified to the employer under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 34(1)(a) (see head (1) in the text); (12) the qualification and address of the person making the report; that he is self-employed or if employed, the name and address of his employer; (13) the date of the thorough examination; (14) the date of the report; (15) the name of the person making the report and where different the name of the person signing or otherwise authenticating it: reg 34(1)(b), Sch 3. As to the application of the 1998 regulations see PARA 482.

6 As to the meaning of 'enforcing authority' see PARA 352 note 2.

7 As to the meaning of 'premises' see PARA 302 note 6.

8 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 34(1).

9 Ie under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33: see PARA 502.

10 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 34(2).

11 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 35(1).

12 Ie a certificate under the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 33: see PARA 502.

13 Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 35(2) (amended by SI 2002/2174).

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## (ii) Display Screens and Workstations

### 504. Display screens and workstations; assessment of risks.

The Health and Safety (Display Screen Equipment) Regulations 1992<sup>1</sup> govern the health and safety aspects of workstations<sup>2</sup>. For the purposes of the 1992 regulations, 'workstation' means an assembly comprising:

- 577 (1) display screen equipment<sup>3</sup>, whether provided with software determining the interface between the equipment and its operator<sup>4</sup> or user<sup>5</sup>, a keyboard, or any other input device;
- 578 (2) any optional accessories to the display screen equipment;
- 579 (3) any disk drive, telephone, modem, printer, document holder, work chair, work surface, or other item peripheral to the display screen equipment; and
- 580 (4) the immediate work environment around the display screen equipment<sup>6</sup>.

Nothing in those regulations, however, applies to or in relation to:

- 581 (a) drivers' cabs or control cabs for vehicles or machinery;
- 582 (b) display screen equipment on board a means of transport;
- 583 (c) display screen equipment mainly intended for public operation;
- 584 (d) portable systems not in prolonged use;
- 585 (e) calculators, cash registers or any equipment having a small data or measurement display required for direct use<sup>7</sup> of the equipment; or
- 586 (f) window typewriters<sup>8</sup>.

Every employer<sup>9</sup> must perform a suitable and sufficient analysis of those workstations which are used for the purposes of his undertaking by users or have been provided by him and are used for the purposes of his undertaking by operators, for the purpose of assessing the health and safety risks to which persons are exposed in consequence of that use<sup>10</sup>. Any such assessment must be reviewed by the employer if there is reason to suspect that it is no longer valid, or if there has been a significant change in the matters to which it relates<sup>11</sup>; and where as a result of any such review changes to an assessment are required, the employer concerned must make them<sup>12</sup>. The employer must reduce the risks identified in consequence of an assessment<sup>13</sup> to the lowest extent reasonably practicable<sup>14</sup>.

The Health and Safety Executive has issued detailed guidance on the 1992 regulations<sup>15</sup>.

1    le the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, which came into force on 1 January 1993: reg 1(1). The 1992 regulations implement EC Council Directive 90/270 (OJ L156, 21.6.1990, p 14). The Health and Safety Executive has issued guidance on risk assessment for these purposes: see *A Guide to Risk Assessment Requirements* (HSE, INDG218, reprinted in January 2004). See also the text and note 15. As to the Health and Safety Executive see PARA 361 et seq.

2    The Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, apply to and in relation to premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain)

Order 2001, SI 2001/2127 (see PARA 305), as they apply within Great Britain: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 9; Interpretation Act 1978 s 17(2).

The Secretary of State for Defence may, in the interests of national security, exempt any of the home forces, any visiting force or any headquarters from any of the requirements imposed by the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792: reg 8(1). Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State for Defence by a further certificate in writing at any time: reg 8(2). For these purposes, 'home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142); 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140); and 'headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 8(3); Interpretation Act 1978 s 17(2).

3 For these purposes, 'display screen equipment' means any alphanumeric or graphic display screen, regardless of the display process involved: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(2)(a).

4 'Operator' means a self-employed person who habitually uses display screen equipment as a significant part of his normal daily work: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(2)(b). As to the meaning of 'self-employed person' see PARA 302 note 5.

5 'User' means an employee who habitually uses display screen equipment as a significant part of his normal work: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(2)(d). As to the meaning of 'employee' see PARA 302 note 4.

6 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(2)(e).

7 For these purposes, 'use' means use for or in connection with work: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(2)(c).

8 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 1(4).

9 There is no statutory definition of 'employer' for these purposes.

10 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2(1). As to the health and safety risks of using visual display units see eg *Mughal v Reuters Ltd* [1993] IRLR 571, 16 BMLR 127 (employer who made available appropriate equipment for avoiding physical strain not liable for repetitive strain injury (RSI) allegedly suffered as a result of using visual display units; doubt expressed as to whether RSI constitutes medical condition). See also *Pickford v Imperial Chemical Industries plc* [1998] 3 All ER 462, [1998] 1 WLR 1189, HL.

11 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2(2)(a), (b).

12 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2(2).

13 The reference in the text to an assessment is to an assessment made in pursuance of the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2(1) and changed where necessary in pursuance of reg 2(2): reg 2(4).

14 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2(3). As to what is 'reasonably practicable' see PARA 417.

15 See *Work with Display Screen Equipment* (L26, HSE Books). As to the status of such guidance see PARA 371. See also note 2.



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**505. General requirements in respect of workstations.**

Every employer must ensure that any workstation<sup>1</sup> which may be used<sup>2</sup> for the purposes of his undertaking meets the specified requirements<sup>3</sup> to the extent that:

- 587 (1) those requirements relate to a component which is present in the workstation concerned;
- 588 (2) those requirements have effect with a view to securing the health, safety and welfare of persons at work; and
- 589 (3) the inherent characteristics of a given task make compliance with those requirements appropriate as respects the workstation concerned<sup>4</sup>.

1 As to the meaning of 'workstation' see PARA 504.

2 As to the meaning of 'use' see PARA 504 note 7.

3 I.e. the requirements specified in the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3, Schedule. As to the specified requirements see PARAS 506-508; and as to the application of the 1992 regulations see PARA 504.

4 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3, Schedule para 1 (reg 3 substituted by SI 2002/2174).

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**506. Requirements in respect of workstations; equipment.**

The use<sup>1</sup> as such of equipment must not be a source of risk for operators<sup>2</sup> or users<sup>3</sup>. So far as the display screen is concerned:

- 590 (1) the characters on the screen must be well-defined and clearly formed, of adequate size, and with adequate spacing between the characters and lines;
- 591 (2) the image on the screen should be stable, with no flickering or other forms of instability;
- 592 (3) the brightness and the contrast between the characters and the background must be easily adjustable by the operator or user, and also easily adjustable to ambient conditions;
- 593 (4) the screen must swivel and tilt easily to suit the needs of the operator or user;
- 594 (5) it must be possible to use a separate base for the screen, or an adjustable table;
- 595 (6) the screen must be free of reflective glare and reflections liable to cause discomfort to the operator or user<sup>4</sup>.

So far as the keyboard is concerned:

- 596 (a) it must be tiltable and separate from the screen so as to allow the operator or user to find a comfortable working position avoiding fatigue in the arms or hands;
- 597 (b) the space in front of the keyboard must be sufficient to provide support for the hands or arms of the operator or user;
- 598 (c) the keyboard must have a matt surface to avoid reflective glare;
- 599 (d) the arrangement of the keyboard and the characteristics of the keys must be such as to facilitate the use of the keyboard; and
- 600 (e) the symbols on the keys must be adequately contrasted and legible from the design working position<sup>5</sup>.

So far as the work desk or work surface is concerned:

- 601 (i) it must have a sufficiently large, low reflectance surface and allow a flexible arrangement of the screen, keyboard, documents and related equipment;
- 602 (ii) the document holder must be stable and adjustable and must be positioned so as to minimise the need for uncomfortable head and eye movements; and
- 603 (iii) there must be adequate space for operators or users to find a comfortable position<sup>6</sup>.

So far as the work chair is concerned:

- 604 (A) it must be stable and allow the operator or user easy freedom of movement and a comfortable position;
- 605 (B) it must be adjustable in height;

- 606 (c) its back must be adjustable in both height and tilt; and  
607 (d) a footrest must be made available to any operator or user who wishes to have one<sup>7</sup>.

- 1 As to the meaning of 'use' see PARA 504 note 7.
- 2 As to the meaning of 'operator' see PARA 504 note 4.
- 3 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3, Schedule para 2(a) (reg 3 substituted by SI 2002/2174). As to the meaning of 'user' see PARA 504 note 5; and as to the application of the 1992 regulations see PARA 504.
- 4 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 2(b).
- 5 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 2(c).
- 6 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 2(d).
- 7 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 2(e).

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### **507. Requirements in respect of workstations; environment.**

Requirements for workstations<sup>1</sup> are specified in relation to space, lighting, reflections and glare, noise, heat, radiation and humidity, as set out below<sup>2</sup>:

- 608 (1) in relation to space, the workstation must be of such dimension and design as to provide sufficient space for the operator<sup>3</sup> or user<sup>4</sup> to change position and vary movements<sup>5</sup>;
- 609 (2) in relation to lighting, any room lighting or task lighting provided must ensure satisfactory lighting conditions and an appropriate contrast between the screen and the background environment, taking into account the type of work and the vision requirement of the operator or user. Possible disturbing glare and reflections on the screen or other equipment must be prevented by co-ordinating workplace and workstation layout with the positioning and technical characteristics of the artificial light sources<sup>6</sup>;
- 610 (3) in relation to reflections and glare, workstations must be so designed that sources of light such as windows and other openings, transparent or translucent walls, and brightly coloured fixtures or walls cause no direct glare and no distracting reflections on the screen. Windows must be fitted with a suitable system of adjustable covering to attenuate the daylight that falls on the workstation<sup>7</sup>;
- 611 (4) in relation to noise, noise emitted by equipment belonging to any workstation must be taken into account when a workstation is being equipped, with a view in particular to ensuring that attention is not distracted and speech is not disturbed<sup>8</sup>;
- 612 (5) in relation to heat, equipment belonging to any workstation must not produce excess heat which could cause discomfort to operators or users<sup>9</sup>;
- 613 (6) in relation to radiation, all radiation with the exception of the visible part of the electromagnetic spectrum must be reduced to negligible levels from the point of view of the protection of operators' or users' health and safety<sup>10</sup>;
- 614 (7) in relation to humidity, an adequate level of humidity must be established and maintained<sup>11</sup>.

1 As to the meaning of 'workstation' see PARA 504.

2 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3, Schedule para 3 (reg 3 substituted by SI 2002/2174). As to the application of the 1992 regulations see PARA 504.

3 As to the meaning of 'operator' see PARA 504 note 4.

4 As to the meaning of 'user' see PARA 504 note 5.

5 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(a).

6 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(b).

7 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(c).

8 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(d).

9 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(e).

- 10 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(f).
- 11 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 3(g).

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**508. Requirements in respect of workstations; interface between computer and operator or user.**

In designing, selecting, commissioning and modifying software, and in designing tasks using display screen equipment<sup>1</sup>, the employer must take into account the following principles<sup>2</sup>:

- 615 (1) software must be suitable for the task<sup>3</sup>;
- 616 (2) software must be easy to use and, where appropriate, adaptable to the level of knowledge or experience of the operator<sup>4</sup> or user<sup>5</sup>; no quantitative or qualitative checking facility may be used without the knowledge of the operators or users<sup>6</sup>;
- 617 (3) systems must provide feedback to operators or users on the performance of those systems<sup>7</sup>;
- 618 (4) systems must display information in a format and at a pace which are adapted to operators or users<sup>8</sup>; and
- 619 (5) the principles of software ergonomics must be applied, in particular to human data processing<sup>9</sup>.

1 As to the meaning of 'display screen equipment' see PARA 504 note 3.

2 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3, Schedule para 4 (reg 3 substituted by SI 2002/2174). As to the application of the 1992 regulations see PARA 504.

3 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 4(a).

4 As to the meaning of 'operator' see PARA 504 note 4.

5 As to the meaning of 'user' see PARA 504 note 5.

6 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 4(b).

7 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 4(c).

8 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 4(d).

9 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, Schedule para 4(e).

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**509. Work routines at display screen equipment.**

Every employer must plan the activities of users<sup>1</sup> at work in his undertaking so that their daily work on display screen equipment<sup>2</sup> is periodically interrupted by such breaks or changes in activity as reduce their workload at that equipment<sup>3</sup>.

1 As to the meaning of 'user' see PARA 504 note 5.

2 As to the meaning of 'display screen equipment' see PARA 504 note 3.

3 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 4. As to the application of the 1992 regulations see PARA 504.

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### **510. Work at display screen equipment; eyes and eyesight.**

Where a person (1) is a user<sup>1</sup> in the undertaking in which he is employed; or (2) is to become a user in the undertaking in which he is, or is to become, employed, the employer who carries on the undertaking must, if requested by that person, ensure that an appropriate eye and eyesight test is carried out on him by a competent person within the specified time<sup>2</sup>.

At regular intervals after an employee<sup>3</sup> has been provided, whether before or after becoming an employee, with an eye and eyesight test in accordance with the above requirement, his employer must ensure that he is provided with a further eye and eyesight test of an appropriate nature, any such test to be carried out by a competent person<sup>4</sup>; but nothing in this provision requires an employer to provide any employee with an eye and eyesight test against that employee's will<sup>5</sup>.

Where a user experiences visual difficulties which may reasonably be considered to be caused by work on display screen equipment<sup>6</sup>, his employer must ensure that he is provided at his request with an appropriate eye and eyesight test, any such test to be carried out by a competent person as soon as practicable after being so requested<sup>7</sup>.

Every employer must ensure that each user employed by him is provided with special corrective appliances appropriate for the work being done by the user concerned where:

- 620 (a) normal corrective appliances cannot be used; and
- 621 (b) the result of any eye and eyesight test which the user has been given in accordance with the above provisions shows such provision to be necessary<sup>8</sup>.

1 As to the meaning of 'user' see PARA 504 note 5.

2 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(1) (reg 5(1), (2) substituted, and reg 5(3) amended, by SI 2002/2174). The specified time is (1) in the case of a person mentioned in head (1) in the text, as soon as practicable after the request; and (2), in the case of a person mentioned in head (2) in the text, before he becomes a user: Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(2) (as so substituted). As to the application of the 1992 regulations see PARA 504; and as to the meaning of 'reasonably practicable' see PARA 417.

3 As to the meaning of 'employee' see PARA 302 note 4.

4 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(3) (as amended: see note 2).

5 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(6).

6 As to the meaning of 'display screen equipment' see PARA 504 note 3.

7 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(4).

8 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5(5).



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### **511. Work at display screen equipment; provision of training.**

Where a person (1) is a user<sup>1</sup> in the undertaking in which he is employed; or (2) is to become a user in the undertaking in which he is, or is to become, employed, the employer who carries on the undertaking must ensure that he is provided with adequate health and safety training in the use of any workstation<sup>2</sup> upon which he may be required to work<sup>3</sup>. In the case of a person mentioned in head (2) above, the training must be provided before he becomes a user<sup>4</sup>.

Every employer must ensure that each user at work in his undertaking is provided with adequate health and safety training whenever the organisation of any workstation in that undertaking upon which he may be required to work is substantially modified<sup>5</sup>.

1 As to the meaning of 'user' see PARA 504 note 5.

2 As to the meaning of 'workstation' see PARA 504.

3 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6(1) (substituted by SI 2002/2174). As to the application of the 1992 regulations see PARA 504.

4 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6(1A) (added by SI 2002/2174).

5 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6(2). See *Fifield v Denton Hall Legal Services* [2006] EWCA Civ 169, (2006) Times, 22 March, [2006] All ER (D) 104 (Mar).

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## **512. Work at display screen equipment; provision of information.**

Every employer must ensure that operators<sup>1</sup> and users<sup>2</sup> at work in his undertaking are provided with adequate information about all aspects of health and safety relating to their workstations<sup>3</sup>. He must also ensure that:

- 622 (1) such operators and users are provided with such information about measures taken by the employer in compliance with his duties to assess risks<sup>4</sup>, and in respect of equipment<sup>5</sup>, as relate to them and their work<sup>6</sup>;
- 623 (2) such users are provided with adequate information about such measures as are taken by the employer in compliance with his duties to plan work activities<sup>7</sup> and provide training upon the modification of the organisation of a workstation<sup>8</sup>, as relate to them and their work<sup>9</sup>;
- 624 (3) users employed by him are provided with adequate information about such measures as are taken by the employer in compliance with his duties in respect of eye and eyesight tests<sup>10</sup> and training<sup>11</sup>, as relate to them and their work<sup>12</sup>.

1 As to the meaning of 'operator' see PARA 504 note 4.

2 As to the meaning of 'user' see PARA 504 note 5.

3 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 7(1)(a). As to the application of the 1992 regulations see PARA 504; and as to the meaning of 'workstation' see PARA 504.

4 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 2: see PARA 504.

5 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 3: see PARA 506.

6 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 7(1)(b).

7 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 4: see PARA 509.

8 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6(2): see PARA 511.

9 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 7(2).

10 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 5: see PARA 510.

11 Ie under the Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 6(1): see PARA 511.

12 Health and Safety (Display Screen Equipment) Regulations 1992, SI 1992/2792, reg 7(3).

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### **(iii) Water-sealed Gasholders**

#### **513. Safety of water-sealed gasholders.**

Every gasholder<sup>1</sup> in a factory<sup>2</sup> must be of sound construction and properly maintained<sup>3</sup> and must be thoroughly examined externally by a competent person at least once every two years, and a record containing the prescribed particulars of every examination must be kept available for inspection<sup>4</sup>. If any gasholder lift has been in use for more than 20 years, the internal state of the sheeting must be examined by a competent person at least once every ten years by cutting samples from the crown and sides of the holder or by other sufficient means, and all these samples and a report on every examination signed by the person making it must be kept available for inspection<sup>5</sup>.

A record signed by the occupier<sup>6</sup> of the factory or by a responsible official authorised for that purpose showing the date of construction of the oldest lift of every gasholder in the factory, as nearly as it can be ascertained, must be kept available for inspection<sup>7</sup>. Where there is more than one gasholder in a factory, each must be conspicuously marked with a distinguishing number or letter<sup>8</sup>. No gasholder may be repaired or demolished except under the direct supervision of a specially qualified person, who, by his training and experience and his knowledge of the necessary precautions against risks of explosion and persons being overcome by gas, is competent to supervise such work<sup>9</sup>.

1 'Gasholder' means a water-sealed gasholder which has a storage capacity of not less than 140 cubic metres: Factories Act 1961 s 39(7) (amended by SI 1983/978).

2 As to the meaning of 'factory' see PARA 318 et seq.

3 Factories Act 1961 s 39(1). As to the meaning of 'maintained' see PARA 459 note 3.

4 Factories Act 1961 s 39(2) (amended by SI 2009/605). For the prescribed particulars see the Gasholders (Record of Examinations) Order 1938, SR & O 1938/598.

5 Factories Act 1961 s 39(3). As to the keeping of records see PARA 390.

6 As to the occupier of a factory see PARA 862 text to notes 5-6.

7 Factories Act 1961 s 39(4).

8 Factories Act 1961 s 39(5).

9 Factories Act 1961 s 39(6).

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#### (iv) Lifting Equipment

##### 514. Application of the Lifting Operations and Lifting Equipment Regulations 1998.

The safety of lifting equipment<sup>1</sup> and lifting operations<sup>2</sup> involving such equipment is governed by the Lifting Operations and Lifting Equipment Regulations 1998<sup>3</sup>, which came into force on 5 December 1998<sup>4</sup>. Those regulations apply both in and, in certain circumstances, outside<sup>5</sup> Great Britain<sup>6</sup>; and the requirements imposed by them on an employer<sup>7</sup>:

- 625 (1) in respect of lifting equipment, apply in relation to lifting equipment provided for use or used by an employee<sup>8</sup> of his at work<sup>9</sup>;
- 626 (2) also apply:
- 95
- 148. (a) to a self-employed person<sup>10</sup>, in respect of lifting equipment he uses at work;
- 149. (b) subject to the exception for equipment supplied by way of sale, agreement for sale or hire-purchase agreement<sup>11</sup>, to a person who has control<sup>12</sup> to any extent of lifting equipment, of a person at work who uses or supervises or manages the use of lifting equipment or of the way in which lifting equipment is used, and to the extent of his control<sup>13</sup>.
- 96

The requirements imposed by the 1998 regulations on an employer do not, however, apply to a person in respect of lifting equipment supplied by him by way of sale, agreement for sale or hire-purchase agreement<sup>14</sup>. Nor do those regulations impose any obligation in relation to a ship's<sup>15</sup> work equipment, whether that equipment is used on or off the ship<sup>16</sup>. Where merchant shipping requirements<sup>17</sup> are applicable<sup>18</sup> to a ship's work equipment, however, the latter exception relieves the shore employer<sup>19</sup> of his obligations under the 1998 regulations in respect of that equipment only where he has taken all reasonable steps to satisfy himself that the merchant shipping requirements are being complied with in respect of that equipment<sup>20</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any of the home forces<sup>21</sup>, any visiting force<sup>22</sup> or any headquarters<sup>23</sup> from any of the requirements of the 1998 regulations<sup>24</sup>. Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by that Secretary of State by a certificate in writing at any time<sup>25</sup>.

The regulations are supported by an approved code of practice<sup>26</sup>.

1 For these purposes, 'lifting equipment' means work equipment for lifting or lowering loads and includes its attachments used for anchoring, fixing or supporting it; 'load' includes a person; and 'work equipment' means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 2(1).

2 'Lifting operation' means an operation concerned with the lifting or lowering of a load: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, regs 2(1), 8(2).

3 I.e. the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307: see the text and notes 4-25; and PARA 515 et seq.

4 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 1.

5 The Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, apply outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(1)(b); Interpretation Act 1978 s 17(2). As to the meaning of 'Great Britain' see PARA 305 note 7.

6 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(1).

7 Except in the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(2), (3) (see heads (1)-(2) in the text), 'employer' includes a person to whom the requirements imposed by the 1998 regulations apply by virtue of reg 3(3)(a), (b) (see head (2) in the text): reg 2(1).

8 As to the meaning of 'employee' see PARA 302 note 4.

9 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(2).

10 As to the meaning of 'self-employed person' see PARA 302 note 5.

11 Is subject to the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(5): see the text and note 14.

12 Any reference in the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(3)(b) to a person having control is a reference to a person having control in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): reg 3(4) (amended by SI 2002/2174).

13 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(3).

14 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(5).

15 For these purposes, 'ship' has the meaning assigned to it by the Merchant Shipping Act 1995 s 313(1) (ie it includes every description of vessel used in navigation) save that it does not include an offshore installation: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(11). As to health and safety on offshore installations see PARA 720 et seq.

16 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(6). Regulation 3(6) does not apply to a ship's work equipment provided for use or used in an activity (whether carried on in or outside Great Britain) specified in the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305), save that it does apply to (1) the loading, unloading, fuelling or provisioning of the ship; or (2) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of the ship: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(10); Interpretation Act 1978 s 17(2). See also note 19.

17 For these purposes, 'merchant shipping requirements' means the requirements of the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988, SI 1988/1636, regs 3, 4 and of the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988, SI 1988/1639, regs 5-10 (revoked: see now the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183; and the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006, SI 2006/2184) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 646): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(11).

18 In a case where the merchant shipping requirements are not applicable to the ship's work equipment by reason only that for the time being there is no master, crew or watchman on the ship, those requirements are nevertheless to be treated for the purpose of the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(7) as if they were applicable: reg 3(8). 'Master' has the meaning assigned to it by the Merchant Shipping Act 1995 s 313(1) (ie it includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(11).

19 'Shore employer' means an employer of persons (other than the master and crew of any ship) who are engaged in a specified operation; and 'specified operation' means an operation in which the ship's work equipment is used (1) by persons other than the master and crew; or (2) where persons other than the master and crew are liable to be exposed to a risk to their health or safety from its use: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(11). Where the ship's work equipment is used in a specified operation, reg 3(6) (see the text and notes 15-16) does not apply to regs 6 and 8 (each as applied by reg 3) (see PARAS 517, 519): reg 3(9).

20 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 3(7).

21 For these purposes, 'home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 12(2)(a).

22 For these purposes, 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 12(2)(c).

23 For these purposes, 'headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 12(2)(b); Interpretation Act 1978 s 17(2).

24 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 12(1).

25 See note 24.

26 See the Approved Code of Practice and HSE Guidance on Safe Use of Lifting Equipment (ACoP and Guidance L113). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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### **515. Strength and stability.**

Every employer<sup>1</sup> must ensure that lifting equipment<sup>2</sup> is of adequate strength and stability for each load<sup>3</sup>, having regard in particular to the stress induced at its mounting or fixing point<sup>4</sup> and that every part of a load and anything attached to it and used in lifting it is of adequate strength<sup>5</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 As to the meaning of 'lifting equipment' see PARA 514 note 1.

3 As to the meaning of 'load' see PARA 514 note 1.

4 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 4(a).

5 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 4(b). As to the application of the 1998 regulations see PARA 514.

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**516. Lifting equipment for lifting persons.**

Every employer<sup>1</sup> must ensure that lifting equipment<sup>2</sup> for lifting persons:

- 627 (1) subject to head (2) below, is such as to prevent a person using it being crushed, trapped or struck or falling from the carrier;
- 628 (2) is such as to prevent, so far as is reasonably practicable<sup>3</sup>, a person using it, while carrying out activities from the carrier, being crushed, trapped or struck or falling from the carrier;
- 629 (3) subject to heads (a) and (b) below, has suitable devices to prevent the risk of a carrier falling;
- 630 (4) is such that a person trapped in any carrier is not thereby exposed to danger and can be freed<sup>4</sup>.

Every employer must also ensure that if the risk described in head (3) above cannot be prevented for reasons inherent in the site and height differences: (a) the carrier has an enhanced safety coefficient suspension rope or chain; and (b) the rope or chain is inspected by a competent person every working day<sup>5</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 As to the meaning of 'lifting equipment' see PARA 514 note 1.

3 As to what is reasonably practicable see PARA 417.

4 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 5(1).

5 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 5(2). As to the application of the 1998 regulations see PARA 514.



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### **517. Positioning and installation.**

Every employer<sup>1</sup> must ensure that lifting equipment<sup>2</sup> is positioned or installed in such a way as to reduce to as low as is reasonably practicable<sup>3</sup> the risk:

- 631 (1) of the lifting equipment or a load<sup>4</sup> striking a person; or
- 632 (2) from a load drifting, falling freely or being released unintentionally,

and it is otherwise safe<sup>5</sup>.

Every employer must also ensure that there are suitable devices to prevent a person from falling down a shaft or hoistway<sup>6</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 As to the meaning of 'lifting equipment' see PARA 514 note 1.

3 As to what is reasonably practicable see PARA 417.

4 As to the meaning of 'load' see PARA 514 note 1.

5 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 6(1).

6 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 6(2). As to the application of the 1998 regulations see PARA 514.

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### **518. Marking of lifting equipment.**

Every employer<sup>1</sup> must ensure that:

633 (1) subject to head (2) below, machinery and accessories for lifting<sup>2</sup> loads<sup>3</sup> are clearly marked to indicate their safe working loads;

634 (2) where the safe working load of machinery for lifting loads depends on its configuration:

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150. (a) the machinery is clearly marked to indicate its safe working load for each configuration; or

151. (b) information which clearly indicates its safe working load for each configuration is kept with the machinery;

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635 (3) accessories for lifting are also marked in such a way that it is possible to identify the characteristics necessary for their safe use;

636 (4) lifting equipment<sup>4</sup> which is designed for lifting persons is appropriately and clearly marked to this effect; and

637 (5) lifting equipment which is not designed for lifting persons but which might be so used in error is appropriately and clearly marked to the effect that it is not designed for lifting persons<sup>5</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 'Accessory for lifting' means lifting equipment for attaching loads to machinery for lifting: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 2(1) (definition amended by SI 2002/2174).

3 As to the meaning of 'load' see PARA 514 note 1.

4 As to the meaning of 'lifting equipment' see PARA 514 note 1.

5 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 7. As to the application of the 1998 regulations see PARA 514.

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### **519. Organisation of lifting operations.**

Every employer<sup>1</sup> must ensure that every lifting operation<sup>2</sup> involving lifting equipment<sup>3</sup> is properly planned by a competent person, appropriately supervised and carried out in a safe manner<sup>4</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 As to the meaning of 'lifting operation' see PARA 514 note 2.

3 As to the meaning of 'lifting equipment' see PARA 514 note 1.

4 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 8(1). As to the application of the 1998 regulations see PARA 514.

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## **520. Thorough examination and inspection.**

Every employer<sup>1</sup> must ensure that:

- 638 (1) before lifting equipment<sup>2</sup> is put into service for the first time by him it is thoroughly examined<sup>3</sup> for any defect unless either:
  - 99 152. (a) the lifting equipment has not been used before; and
  - 153. (b) in the case of lifting equipment for which an EC declaration of conformity<sup>4</sup> could or should<sup>5</sup> have been drawn up, the employer has received such a declaration made not more than 12 months before the lifting equipment is put into service;
  - 100 639 or, if obtained from the undertaking of another person, it is accompanied by physical evidence<sup>6</sup> that the last thorough examination required to be carried out has been carried out<sup>7</sup>;
  - 640 (2) where the safety of lifting equipment depends on the installation conditions, it is thoroughly examined:
    - 101 154. (a) after installation and before being put into service for the first time; and
    - 155. (b) after assembly and before being put into service at a new site or in a new location,
    - 102 641 to ensure that it has been installed correctly and is safe to operate<sup>8</sup>;
    - 642 (3) lifting equipment which is exposed to conditions causing deterioration which is liable to result in dangerous situations is:
      - 103 156. (a) thoroughly examined in the case of lifting equipment for lifting persons or an accessory for lifting, at least every six months, in the case of other lifting equipment, at least every 12 months or, in either case, in accordance with an examination scheme<sup>9</sup> and each time that exceptional circumstances which are liable to jeopardise the safety of the lifting equipment have occurred<sup>10</sup>; and
      - 157. (b) if appropriate for the purpose, is inspected by a competent person at suitable intervals between thorough examinations,
      - 104 643 to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time<sup>11</sup>;
      - 644 (4) no lifting equipment leaves his undertaking or, if obtained from the undertaking of another person, is used in his undertaking, unless it is accompanied by physical evidence that the last thorough examination required to be carried out under these provisions has been carried out<sup>12</sup>.

1 As to the meaning of 'employer' see PARA 514 note 7.

2 As to the meaning of 'lifting equipment' see PARA 514 note 1.

3 'Thorough examination' in relation to a thorough examination under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(1), (2) or (3) (see heads (1)-(3) in the text): (1) means a thorough examination by a competent person; (2) where it is appropriate to carry out testing for the purpose

described in the relevant provision, includes such testing by a competent person as is appropriate for the purpose; and 'thoroughly examined' is to be construed accordingly: reg 2(1).

4 'EC declaration of conformity' means a declaration which complies with (1) the Supply of Machinery (Safety) Regulations 1992, SI 1992/3073, reg 22 (see PARA 533 note 2); (2) EC Council Directive 89/686 (OJ L399, 30.12.89, p 18) on the approximation of the laws of the member states relating to personal protective equipment, art 12.1; or (3) the Lifts Regulations 1997, SI 1997/831, reg 8(2)(d) (see PARA 563 note 4 head (4)); Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 2(1) (definition amended as from 29 December 2009 by SI 2008/1597, so as to refer in head (1) to the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 Section A).

5 le in the case of a declaration under the Lifts Regulations 1997, SI 1997/831.

6 le the physical evidence referred to in the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(4): see head (4) in the text.

7 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(1). As to the application of the 1998 regulations see PARA 514. Regulation 9 does not apply to winding apparatus to which the Mines (Shafts and Winding) Regulations 1993, SI 1993/302 (see PARA 772) apply: Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(5).

8 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(2).

9 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(3)(a)(i)-(iii). 'Examination scheme' means a suitable scheme drawn up by a competent person for such thorough examinations of lifting equipment at such intervals as may be appropriate for the purpose described in reg 9(3) (see head (3) in the text): reg 2(1).

10 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(3)(a)(iv).

11 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(3)(a), (b). For transitional provisions as to the date of the first thorough examination see reg 9(6), (7).

12 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(4).

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## **521. Reports and defects.**

A person making a thorough examination<sup>1</sup> for an employer<sup>2</sup> must:

- 645 (1) notify the employer forthwith of any defect in the lifting equipment<sup>3</sup> which in his opinion is or could become a danger to persons;
- 646 (2) as soon as is practicable<sup>4</sup> make a report of the thorough examination in writing authenticated by him or on his behalf by signature or equally secure means and containing the specified information<sup>5</sup> to the employer and to any person from whom the lifting equipment has been hired or leased;
- 647 (3) where there is in his opinion a defect in the lifting equipment involving an existing or imminent risk of serious personal injury send a copy of the report as soon as is practicable to the relevant enforcing authority<sup>6</sup>.

A person making an inspection<sup>7</sup> for an employer must:

- 648 (a) notify the employer forthwith of any defect in the lifting equipment which in his opinion is or could become a danger to persons;
- 649 (b) as soon as is practicable make a record of the inspection in writing<sup>8</sup>.

Every employer who has been notified of a defect in lifting equipment following a thorough examination<sup>9</sup> must ensure that the lifting equipment is not used before the defect is rectified or, in a case of a defect which is not yet but could become a danger to persons<sup>10</sup>, after a specified time<sup>11</sup> and before the defect is rectified<sup>12</sup>.

1    le under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9: see PARA 520. As to the meaning of 'thorough examination' see PARA 520 note 3.

2    As to the meaning of 'employer' see PARA 514 note 7.

3    As to the meaning of 'lifting equipment' see PARA 514 note 1.

4    As to the meaning of 'as soon as is practicable' see PARA 417.

5    le the information specified in the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, Sch 1. The specified information is: (1) the name and address of the employer for whom the thorough examination was made; (2) the address of the premises at which the thorough examination was made; (3) particulars sufficient to identify the lifting equipment including where known its date of manufacture; (4) the date of the last thorough examination; (5) the safe working load of the lifting equipment or (where its safe working load depends on the configuration of the lifting equipment) its safe working load for the last configuration in which it was thoroughly examined; (6) in relation to the first thorough examination of lifting equipment after installation or after assembly at a new site or in a new location: (a) that it is such thorough examination; (b) (if such be the case) that it has been installed correctly and would be safe to operate; (7) in relation to a thorough examination of lifting equipment other than a thorough examination to which head (6) above relates: (a) whether it is a thorough examination: (i) within an interval of six months under reg 9(3)(a)(i); (ii) within an interval of 12 months under reg 9(3)(a)(ii); (iii) in accordance with an examination scheme under reg 9(3)(a)(iii); or (iv) after the occurrence of exceptional circumstances under reg 9(3)(a)(iv); (b) (if such be the case) that the lifting equipment would be safe to operate; (8) in relation to every thorough examination of lifting equipment: (a) identification of any part found to have a defect which is or could become a danger to persons, and a description of the defect; (b) particulars of any repair, renewal or alteration required to remedy a defect

found to be a danger to persons; (c) in the case of a defect which is not yet but could become a danger to persons: (i) the time by which it could become such danger; (ii) particulars of any repair, renewal or alteration required to remedy it; (d) the latest date by which the next thorough examination must be carried out; (e) where the thorough examination included testing, particulars of any test; (f) the date of the thorough examination; (9) the name, address and qualifications of the person making the report; that he is self-employed or, if employed, the name and address of his employer; (10) the name and address of a person signing or authenticating the report on behalf of its author; and (11) the date of the report: reg 10(1)(b), Sch 1 paras 1-11.

6 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(1). For these purposes, 'relevant enforcing authority' means (1) where the defective lifting equipment has been hired or leased by the employer, the Health and Safety Executive; and (2) otherwise, the enforcing authority for the premises in which the defective lifting equipment was thoroughly examined: regs 2(1), 10(4). As to the Health and Safety Executive see PARA 361 et seq; and as to the meaning of 'premises' see PARA 302 note 6. As to the application of the 1998 regulations see PARA 514.

7 Ie under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9: see PARA 520.

8 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(2).

9 Ie under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(1): reg 10(3).

10 Ie in a case to which the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, Sch 1 para 8(c) applies: see note 5 head (8)(c).

11 Ie a time specified in the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, Sch 1 para 8(c).

12 Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(3).

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## **522. Keeping of information.**

Where, after 5 December 1998<sup>1</sup>, an employer<sup>2</sup> obtaining lifting equipment<sup>3</sup> to which the relevant regulations<sup>4</sup> apply<sup>5</sup> receives an EC declaration of conformity<sup>6</sup> relating to it, he must keep the declaration for so long as he operates the lifting equipment<sup>7</sup>.

The employer must ensure that the information contained in:

- 650 (1) every report of a thorough examination made to him<sup>8</sup> is kept available for inspection for the specified time<sup>9</sup>;
- 651 (2) every record of an inspection made<sup>10</sup> is kept available until the next such record is made<sup>11</sup>.

1    Ie the date when the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, came into force: see PARA 514.

2    As to the meaning of 'employer' see PARA 514 note 7.

3    As to the meaning of 'lifting equipment' see PARA 514 note 1.

4    Ie the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307: see PARA 514 et seq.

5    As to the application of the 1998 regulations see PARA 514.

6    As to the meaning of 'EC declaration of conformity' see PARA 520 note 4.

7    Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 11(1).

8    Ie under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(1)(b): see PARA 521.

9    Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 11(2)(a). The specified time is: (1) in the case of a thorough examination under reg 9(1) of lifting equipment other than an accessory for lifting, until he ceases to use the lifting equipment; (2) in the case of a thorough examination under reg 9(1) of an accessory for lifting, two years after the report is made; (3) in the case of a thorough examination under reg 9(2), until he ceases to use the lifting equipment at the place it was installed or assembled; (4) in the case of a thorough examination under reg 9(3), until the next report is made under that paragraph or the expiration of two years, whichever is later: reg 11(2)(a). As to the meaning of 'accessory for lifting' see PARA 518 note 2.

10   Ie under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10(2): see PARA 521.

11   Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 11(2)(b).



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## **(v) Personal Protective Equipment**

### **523. Provision of personal protective equipment.**

Every employer<sup>1</sup> must ensure that suitable<sup>2</sup> personal protective equipment<sup>3</sup> is provided to his employees<sup>4</sup> who may be exposed to a risk to their health and safety while at work<sup>5</sup>, and every self-employed person<sup>6</sup> must ensure that he is so provided where he may be similarly exposed<sup>7</sup>, except (in either case) where and to the extent that the risk has been adequately controlled by other means which are equally or more effective<sup>8</sup>. Where it is to be provided, the employer or self-employed person must also ensure that appropriate accommodation is provided for that personal protective equipment when it is not being used<sup>9</sup>.

Exemption may be granted from this requirement in the interests of national security<sup>10</sup>.

1 In some regulations made under the Health and Safety at Work etc Act 1974 (eg the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see PARA 482 et seq) the obligations, though expressed in the individual regulations to be in relation to an 'employer' are imposed not only on employers but also on the self-employed and those who are in control of processes or premises. There is no corresponding provision in relation to the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, but duties are imposed separately upon employers and the self-employed in certain of the regulations (eg regs 4-8: see notes 2, 5, 7-9; and PARAS 524-526). As to guidance on the 1992 regulations see HSE Guidance on the Personal Protective Equipment at Work Regulations 1992 (L25).

2 Without prejudice to the general requirement set out in the text, personal protective equipment is not suitable unless (1) it is appropriate for the risk or risks involved, the conditions at the place where exposure to the risk may occur, and the period for which it is worn; (2) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it, and of the characteristics of the workstation of each such person; (3) it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed; (4) so far as is practicable (as to the meaning of which see PARA 417) it is effective to prevent or adequately to control the risk or risks involved without increasing overall risk; (5) it complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respect to health or safety in any of the relevant Community directives listed in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, Sch 1 (substituted by SI 1994/3017) which is applicable to that item of personal protective equipment: Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(3) (amended by SI 2002/2174). Where it is necessary to ensure that personal protective equipment is hygienic and otherwise free of risk to health, every employer and every self-employed person must ensure that personal protective equipment provided under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4 is provided to a person for use only by him: reg 4(4) (added by SI 2002/2174). At the date at which this title states the law, the only relevant Community directives scheduled to the 1992 regulations are EC Council Directive 89/686 (OJ L399, 30.12.1989, p 18) on the approximation of the laws of the member states relating to personal protective equipment and EC Council Directive 93/42 (OJ L169, 12.7.1993, p.1) concerning medical devices.

3 'Personal protective equipment' means all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety, and any addition or accessory designed to meet that objective: Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 2(1). The substantive provisions of the regulations (ie regs 4-12) do not apply in respect of personal protective equipment which is (1) ordinary working clothes or uniforms which do not specifically protect the health and safety of the wearer; (2) an offensive weapon within the meaning of the Prevention of Crime Act 1953 s 1(4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 699), used as self-defence or deterrent equipment; (3) portable devices for detecting and signalling risks and nuisances; (4) personal protective equipment used for protection while travelling on a road within the meaning of the Road Traffic Act 1988 s 192(1) (see **ROAD TRAFFIC**); (5) equipment used during the playing of competitive sports: Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 3(2). For other limits on the applicability of the 1992 regulations see notes 5, 10.

Regulation 4 (provision of equipment) and regs 6-12 (assessment, maintenance, replacement, use and loss of equipment; accommodation for equipment; information, instruction and training; and exemption certificates: see PARAS 525-529; and the text and note 10) do not apply where any of the following regulations apply, and in respect of any risk to a person's health or safety for which any of them require the provision or use of personal protective equipment: reg 3(3) (amended by SI 1999/3232 and SI 2006/2739; and by virtue of the Interpretation Act 1978 s 17(2); and SI 2005/1643):

- 48 (a) the Control of Lead at Work Regulations 2002, SI 2002/2676 (see PARAS 641-644);
- 49 (b) the Ionising Radiations Regulations 1999, SI 1999/3232 (see PARAS 648-654);
- 50 (c) the Control of Asbestos Regulations 2006, SI 2006/2739 (see PARAS 630-639);
- 51 (d) the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677 (see PARAS 619-626);
- 52 (e) the Control of Noise at Work Regulations 2005, SI 2005/1643 (see PARAS 612-618);
- 53 (f) the Construction (Head Protection) Regulations 1989, SI 1989/2209 (see PARA 698).

The Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, are applicable to and in relation to premises outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, as they apply within Great Britain (see PARA 305): Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 13; Interpretation Act 1978 s 17(2).

4 As to the meaning of 'employee' see PARA 302 note 4.

5 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1) (reg 4(1) amended, and reg 4(1A) added, by SI 1999/860). Where, however, the characteristics of any policing activity are such that compliance by the relevant officer with the requirement in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1) would lead to an inevitable conflict with the exercise of police powers or performance of police duties, that requirement must be complied with so far as is reasonably practicable: reg 4(1A) (as so added). Certain other regulations require the use of personal protective equipment. The provisions of the 1992 regulations are complementary to those other regulations that are not comprehensive, and excluded by such other regulations as are comprehensive, in their requirements (see note 3).

The Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, which came into force on 1 January 1993 (reg 1), do not apply to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew under the direction of the master (reg 3(1)). See further **SHIPPING AND MARITIME LAW**.

6 As to the meaning of 'self-employed person' see PARA 302 note 5.

7 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(2).

8 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1), (2).

9 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 8.

10 Exemption from the requirements of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, may be conferred by the Secretary of State for Defence by a certificate in writing so as to exempt any of the home forces, any visiting force, or any headquarters from those requirements of the regulations that impose obligations on employers (reg 12(1)(a)); or on any member of the home forces, a visiting force, or headquarters from the requirements imposed by regs 10, 11 (personal use of equipment and reporting of loss: see PARAS 528-529) (reg 12(1)(b)). Any exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State by a further certificate in writing at any time: reg 12(1). 'Home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 142); 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140); 'headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150); and 'member of a headquarters' has the same meaning as in the International Headquarters and Defence Organisations Act 1964 Schedule para 1(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 12(2); Interpretation Act 1978 s 17(2).

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**524. Compatibility of personal protective equipment.**

Every employer must ensure that where the presence of more than one risk to health or safety makes it necessary for his employee<sup>1</sup> to wear or use simultaneously more than one item of personal protective equipment<sup>2</sup> such equipment is compatible and continues to be effective against the risk or risks in question<sup>3</sup>. Every self-employed person is subject to a similar duty in respect of his own equipment<sup>4</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'personal protective equipment' subject to this regulation see PARA 523 note 3.

3 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 5(1).

4 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 5(2). As to the meaning of 'self-employed person' see PARA 302 note 5.

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## 525. Assessment of personal protective equipment.

Before choosing any personal protective equipment<sup>1</sup> which he is required to ensure is provided<sup>2</sup>, an employer or self-employed person must ensure that an assessment is made to determine whether the personal protective equipment he intends to provide is suitable<sup>3</sup>.

The assessment must include:

- 652 (1) an assessment of any risk or risks to health or safety which have not been avoided by other means<sup>4</sup>;
- 653 (2) the definition of the characteristics which personal protective equipment must have in order to be effective against such risks, taking into account any risks which the equipment itself may create<sup>5</sup>;
- 654 (3) comparison of the characteristics of the personal protective equipment available with the characteristics defined as in head (2) above<sup>6</sup>; and
- 655 (4) an assessment as to whether the personal protective equipment is compatible with other personal protective equipment which is in use and which an employee would be required to wear simultaneously<sup>7</sup>.

Any such assessment must be reviewed if there is reason to suspect that it is no longer valid<sup>8</sup>, or if there has been a significant change in the matters to which it relates<sup>9</sup>. Where, as a result of any such review, changes in the assessment are required, the relevant employer or self-employed person must ensure that they are made<sup>10</sup>.

1 As to the meaning of 'personal protective equipment' subject to this regulation see PARA 523 note 3.

2 By virtue of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4: see PARA 523.

3 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(1). As to the meaning of 'self-employed person' see PARA 302 note 5. This requirement follows on from, but does not duplicate, the risk assessment required by the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (see PARA 429 et seq). The Health and Safety Executive has issued guidance on risk assessment for these purposes: see *A Guide to Risk Assessment Requirements* (HSE, INDG218, 1996; reprinted in January 2004).

4 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(2)(a).

5 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(2)(b).

6 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(2)(c).

7 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(2)(d) (added by SI 2002/2174).

8 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(3)(a).

9 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(3)(b).

10 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 6(3).

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## **526. Maintenance and replacement of personal protective equipment.**

Every employer must ensure that any personal protective equipment<sup>1</sup> provided to his employees<sup>2</sup>, and every self-employed person<sup>3</sup> must ensure that any personal protective equipment provided to him<sup>4</sup>, is maintained<sup>5</sup> (including replacement or cleaning as appropriate) in an efficient state, in efficient working order and in good repair<sup>6</sup>.

This obligation relates only to identified risks and is not intended to impose an absolute duty<sup>7</sup>.

1 As to the meaning of 'personal protective equipment' subject to this regulation see PARA 523 note 3.

2 Ie under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1): see PARA 523. As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'self-employed person' see PARA 302 note 5.

4 Ie under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(2): see PARA 523.

5 As to the meaning of 'maintained' as interpreted in analogous legislation under the Factories Act 1961 see PARA 459 note 3.

6 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 7.

7 See *Fytche v Wincanton Logistics plc* [2003] EWCA Civ 874, [2003] ICR 1582, [2003] All ER (D) 334 (Jun); affd [2004] UKHL 31, [2004] 4 All ER 221 [2004] ICR 975 (claimant HGV driver employed by defendant and provided with steel-capped safety boots designed to protect feet against falling of heavy articles or injury due to coming into contact with hard or sharp objects; after an incident when he was out of his cab in very cold weather walking on ice and snow, one of his toes was frostbitten from ingress of water into his boot through a tiny hole; no defect in steel toecap; judge held that defendant not in breach of statutory duty; decision upheld on appeal to Court of Appeal and House of Lords).

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## **527. Information, instruction and training.**

Where an employer is required to ensure that personal protective equipment is provided<sup>1</sup> to an employee<sup>2</sup>, the employer must also ensure that the employee is provided with such information, instruction and training as is adequate<sup>3</sup> and appropriate to enable the employee to know:

- 656 (1) the risk or risks which the personal protective equipment will avoid or limit;
- 657 (2) the purpose for which and the manner in which personal protective equipment is to be used; and
- 658 (3) any action to be taken by the employee to ensure that the personal protective equipment remains in an efficient state, in efficient working order and in good repair<sup>4</sup>,

and must ensure that such information is kept available to employees<sup>5</sup>.

The employer must<sup>6</sup>, where appropriate, and at suitable intervals, organise demonstrations in the wearing of personal protective equipment<sup>7</sup>.

<sup>1</sup> I.e. under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1): see PARA 523. As to the equipment subject to this requirement see PARA 523 note 3.

<sup>2</sup> As to the meaning of 'employee' see PARA 302 note 4.

<sup>3</sup> Without prejudice to the generality of the requirement set out in the text, the information and instruction provided is not adequate and appropriate unless it is comprehensible to the persons to whom it is provided: Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9(2).

<sup>4</sup> I.e. good repair as required by the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 7(1): see PARA 526 text and notes 5-6.

<sup>5</sup> Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9(1) (amended by SI 2002/2174). See also *Bux v Slough Metals Ltd* [1974] 1 All ER 262, [1973] 1 WLR 1358, CA.

<sup>6</sup> I.e. without prejudice to the generality of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9(1).

<sup>7</sup> Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9(3) (added by SI 2002/2174).

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## **528. Use of personal protective equipment.**

Every employer must take all reasonable steps to ensure that any personal protective equipment<sup>1</sup> provided<sup>2</sup> to his employees is properly used<sup>3</sup>.

Every employee must use any personal protective equipment provided to him in accordance both with any training in the use of the equipment concerned which has been received by him and with the instructions respecting that use which have been provided<sup>4</sup> to him<sup>5</sup>.

Every self-employed person must make full and proper use of any personal protective equipment provided<sup>6</sup> to him<sup>7</sup>.

Every employee and self-employed person who has been so provided with personal protective equipment must take all reasonable steps to ensure that it is returned to the accommodation provided for it after use<sup>8</sup>.

1 As to the equipment subject to this requirement see PARA 523 note 3.

2 Ie under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1): see PARA 523.

3 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 10(1). As to the meaning of 'employee' see PARA 302 note 4. See *Lane Group plc v Farmiloe* [2004] PIQR P324, *Farmiloe v Lane Group plc* [2004] All ER (D) 08 (Mar), EAT (employee who could not wear personal protective equipment because of disability not unfairly dismissed).

4 Ie by virtue of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 9: see PARA 527.

5 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 10(2).

6 Ie under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(2): see PARA 523.

7 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 10(3). As to the meaning of 'self-employed person' see PARA 302 note 5.

8 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 10(4). The duty to provide accommodation for such equipment is contained in reg 8: see PARA 523 text and note 9.

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**529. Reporting loss or defect in personal protective equipment.**

Every employee<sup>1</sup> who has been provided<sup>2</sup> with personal protective equipment<sup>3</sup> must forthwith report to his employer any loss or obvious defect in that equipment<sup>4</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 Ie under the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 4(1): see PARA 523.

3 As to the equipment subject to this requirement see PARA 523 note 3.

4 Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 11.



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### (3) DRIVING AT WORK

#### 530. Liability of employers under road traffic legislation.

The general law requiring compliance with road traffic legislation, as well as the health and safety legislation, applies to both employers and employees where the employees' work<sup>1</sup> involves driving on the public highway, whether in a company vehicle, a hired vehicle or an employee's own vehicle<sup>2</sup>.

Employers may be liable as owners for offences in connection with the construction and use of vehicles<sup>3</sup>, or may be made liable for an offence which is an act or omission of their employee or agent<sup>4</sup>, or may be vicariously liable for the acts and omissions of their employees while acting in the course of their employment<sup>5</sup>.

Employers are also responsible for ensuring compliance with the requirements as to tachographs and the regulation of drivers' hours<sup>6</sup>.

The general duty of an employer to ensure, so far as is reasonably practicable<sup>7</sup>, the health, safety and welfare at work of all his employees<sup>8</sup> will apply to the risks connected with driving as it applies in the workplace.

1 As to the meaning of 'work' see PARA 302 note 1.

2 Road traffic legislation is managed by the Department for Transport, and enforcement is mainly entrusted to the police and the Vehicle and Operator Services Agency (VOSA), but the Health and Safety Executive also has a role to play in ensuring compliance. As to road traffic legislation and its enforcement generally see **ROAD TRAFFIC**. As to the Health and Safety Executive see PARA 361 et seq.

3 See the Road Traffic Act 1988 ss 40A, 41A-41D, 42; the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 260 et seq.

The prohibition on the use of mobile telephones while driving falls under these provisions, and an employer may be liable for causing or permitting an employee to drive a motor vehicle on a road while the employee is using a hand-held mobile telephone or a hand-held device of a specified kind: see the Road Traffic Act 1988 s 41D (added by the Road Safety Act 2006 s 26(1)); the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 110 (added by SI 2003/2695); and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARAS 264, 624.

4 Eg the offence of causing or permitting a motor vehicle to be used on a road or other public place without third party insurance: see the Road Traffic Act 1988 s 143; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 235, vol 40(2) (2007 Reissue) PARA 937; **INSURANCE** vol 25 (2003 Reissue) PARA 729 et seq.

5 See **EMPLOYMENT** vol 39 (2009) PARA 32; **TORT** vol 97 (2010) PARA 429.

6 As to drivers' hours see the Transport Act 1968 Pt VI (ss 95-103); and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1380 et seq.

7 As to what is reasonably practicable see PARA 417.

8 See PARA 421.

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## **5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC**

### **(1) GENERAL DUTIES OF MANUFACTURERS, IMPORTERS AND SUPPLIERS**

#### **531. Duties of manufacturers, importers and suppliers under the Health and Safety at Work etc Act 1974.**

It is the duty<sup>1</sup> of any person who designs, manufactures, imports or supplies any article for use at work<sup>2</sup> or any article of fairground equipment<sup>3</sup>:

- 659 (1) to ensure, so far as is reasonably practicable<sup>4</sup>, that the article is so designed and constructed that it will be safe and without risks to health<sup>5</sup> at all times when it is being set, used, cleaned or maintained by a person at work<sup>6</sup>;
- 660 (2) to carry out, or arrange for the carrying out of, such testing and examination as may be necessary for the performance of that duty<sup>7</sup>;
- 661 (3) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons supplied by him with the article are provided with adequate information about the use for which the article has been designed or tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work and when it is being dismantled or disposed of<sup>8</sup>; and
- 662 (4) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons supplied with information are provided with all such revisions of that information as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety<sup>9</sup>.

Analogous duties apply in respect of fairground equipment when it is being used for the entertainment of members of the public<sup>10</sup>.

It is the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work, or who erects or installs any article of fairground equipment, to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health at such time as it is being set, used, cleaned or maintained by a person at work, or used for the entertainment of members of the public<sup>11</sup>.

It is the duty of any person who manufactures, imports or supplies any substance:

- 663 (a) to ensure, so far as is reasonably practicable, that the substance will be safe and without risk to health at all times when it is being used, handled, processed, stored or transported by a person at work or in non-domestic premises made available as a place of work<sup>12</sup>;
- 664 (b) to carry out, or arrange for the carrying out of, such testing and examination as may be necessary to ensure compliance with head (a) above<sup>13</sup>;

- 665 (c) to take such steps as are necessary to secure that persons supplied by him with the substance are provided with adequate information about any risks to health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when it is being used, handled, processed, stored or transported by a person at work or in non-domestic premises made available as a place of work and when it is being disposed of<sup>14</sup>; and
- 666 (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons supplied with information are provided with all such revisions of that information as necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety<sup>15</sup>.

Provision is made for persons to be relieved of the duties set out above in certain circumstances<sup>16</sup>.

Health and safety regulations made either under the Health and Safety at Work etc Act 1974, under the European Communities Act 1972, or under both of those Acts, impose specific requirements on designers, manufacturers, importers and suppliers of specified articles for use at work<sup>17</sup>. Criminal proceedings relating to unsafe machinery may be brought either under the relevant regulations made under the 1972 Act or under the 1974 Act<sup>18</sup>.

Adequate information must be provided about the noise likely to be generated by an article for use at work or an article of fairground equipment<sup>19</sup>.

1 The duties set out in the text and notes 2-16 extend only to things done in the course of a trade, business or other undertaking carried on by the person subject to the duty (whether for profit or not) and to matters within his control: Health and Safety at Work etc Act 1974 s 6(7).

2 As to the meaning of 'article for use at work' see PARA 302 note 7.

3 'Article of fairground equipment' means any fairground equipment or any article designed for use as a component in any such equipment; and 'fairground equipment' means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public: Health and Safety at Work etc Act 1974 s 53(1) (definitions added by the Consumer Protection Act 1987 s 36, Sch 3).

4 As to what is reasonably practicable see PARA 417.

5 For these purposes, an absence of safety or a risk to health is to be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of the Health and Safety at Work etc Act 1974 s 6(1)(a), (1A)(a) or (4)(a) has been performed regard must be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied: s 6(10) (added by the Consumer Protection Act 1987 Sch 3 para 1). As to the meaning of 'risk to health' see PARA 421 note 4.

6 Health and Safety at Work etc Act 1974 s 6(1)(a) (s 6(1) substituted by the Consumer Protection Act 1987 Sch 3 para 1). It is the duty of any person who undertakes the design or manufacture of any article for use at work or of any article of fairground equipment to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise: Health and Safety at Work etc Act 1974 s 6(2) (amended by the Consumer Protection Act 1987 Sch 3 para 1).

7 Health and Safety at Work etc Act 1974 s 6(1)(b) (as substituted: see note 6). A person is not required to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions: s 6(6).

8 Health and Safety at Work etc Act 1974 s 6(1)(c) (as substituted: see note 6).

9 Health and Safety at Work etc Act 1974 s 6(1)(d) (as substituted: see note 6).

10 It is the duty of any person who designs, manufactures, imports or supplies any article of fairground equipment (1) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; (2) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by head (1) above; (3) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; and (4) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of head (3) above as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety: Health and Safety at Work etc Act 1974 s 6(1A) (added by the Consumer Protection Act 1987 Sch 3 para 1).

11 Health and Safety at Work etc Act 1974 s 6(3) (amended by the Consumer Protection Act 1987 Sch 3 para 1). As to the meaning of 'premises' see PARA 302 note 6.

12 Health and Safety at Work etc Act 1974 s 6(4)(a) (substituted by the Consumer Protection Act 1987 Sch 3 para 1). It is the duty of any person who undertakes the manufacture of any substance to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise at such times: Health and Safety at Work etc Act 1974 s 6(5) (amended by the Consumer Protection Act 1987 Sch 3 para 1). As to the meanings of 'non-domestic premises' and 'substance' see PARA 302 notes 6-7.

13 Health and Safety at Work etc Act 1974 s 6(4)(b) (as substituted: see note 12). Section 6(6) (see note 7) also applies to this provision.

14 Health and Safety at Work etc Act 1974 s 6(4)(c) (as substituted: see note 12).

15 Health and Safety at Work etc Act 1974 s 6(4)(d) (as substituted: see note 12).

16 Where a person designs, manufactures, imports or supplies an article and does so for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health, the undertaking has the effect of relieving the first-mentioned person from the duty imposed to such an extent as is reasonable having regard to the terms of the undertaking: Health and Safety at Work etc Act 1974 s 6(8). This does not, however, apply to any duty in respect of anything which (1) in the case of an article designed outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or (2) in the case of an article or substance manufactured outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance: s 6(8A) (added by the Consumer Protection Act 1987 Sch 3 para 1). Where an ostensible supplier supplies any article or substance to a 'customer' under a hire-purchase agreement, conditional sale agreement or credit-sale agreement and the ostensible supplier carries on the business of financing the acquisition of goods by others by means of such agreements, and, in the course of that business, acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person, that third person and not the ostensible supplier is treated as supplying the article or substance to the customer and the duties imposed by the Health and Safety at Work etc Act 1974 s 6 on suppliers accordingly fall on the third party and not on the ostensible supplier: s 6(9) (amended by the Consumer Protection Act 1987 Sch 3 para 1). Unless the context otherwise requires, 'hire-purchase agreement' means an agreement other than a conditional sale agreement, under which (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired; and (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs: (i) the exercise of an option to purchase by that person; (ii) the doing of any other specified act by any party to the agreement; (iii) the happening of any other event; and 'hire-purchase' is to be construed accordingly; 'conditional sale agreement' means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; and 'credit-sale agreement' means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement: Health and Safety at Work etc Act 1974 s 53(1). See further **CONSUMER CREDIT**.

17 See eg the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597; and PARA 533 et seq; the Construction (Design and Management) Regulations 2007, SI 2007/320; and PARA 674 et seq; the Personal Protective Equipment Regulations 2002, SI 2002/1144; and PARAS 567-568. See also the Ionising Radiations Regulations 1999, SI 1999/3232, reg 31; and PARA 652.

18 See *R (on the application of Junttan Oy) v Bristol Magistrates' Court* [2003] UKHL 55, [2004] 2 All ER 555, [2003] ICR 1475; and PARA 881.

19 See PARA 618.

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### **532. Leasing of work equipment; in general.**

Where a person (the 'ostensible supplier') supplies an article for use at work or an article of fairground equipment to another (the 'customer') under a lease<sup>1</sup> and (1) the ostensible supplier has not previously granted any lease to the customer in respect of that article; (2) the ostensible supplier carries on the business of financing by means of leases the use of goods by others; (3) in the course of that business he acquired his interest in the article for the purpose of financing its provision to the customer by a third person (the 'effective supplier'); (4) he or his agent either has not had physical possession of the article, or has had physical possession of the article only for the purpose of passing it to the customer; and (5) he or his agent has not modified, overhauled, repaired or restored the article, then the effective supplier and not the ostensible supplier is treated, for the purposes of the provisions set out in the previous paragraph<sup>2</sup>, as having supplied the article<sup>3</sup>. Nor is any duty imposed by those provisions where a further lease is granted to the same customer by such an ostensible supplier, if the article has remained in the physical possession of the customer since he first took possession of it under the first lease, and the article has not at any time been modified, overhauled, repaired or restored by or on behalf of the ostensible supplier<sup>4</sup>.

1 'Lease' means any kind of agreement or arrangement under which payments are, or are to be, made for the supply of an article for use at work or an article of fairground equipment except a conditional sale agreement, a credit-sale agreement, a hire-purchase agreement or a contract of sale: Health and Safety (Leasing Arrangements) Regulations 1992, SI 1992/1524, reg 2. As to the agreements mentioned see **CONSUMER CREDIT**. As to the meaning of 'article for use at work' see PARA 302 note 7; and as to the meaning of 'fairground equipment' see PARA 531 note 3.

2 I.e the Health and Safety at Work etc Act 1974 s 6, especially s 6(1), (1A) (substituted and added by the Consumer Protection Act 1987 s 36, Sch 3 para 1): see PARA 531.

3 Health and Safety (Leasing Arrangements) Regulations 1992, SI 1992/1524, reg 3.

4 Health and Safety (Leasing Arrangements) Regulations 1992, SI 1992/1524, reg 4.

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## **(2) SUPPLY ETC OF MACHINERY AND SAFETY COMPONENTS**

### **(i) General Requirements**

#### **533. Safety requirements for machinery.**

No person who is a responsible person<sup>1</sup> for the purposes of the relevant regulations<sup>2</sup> may place machinery<sup>3</sup> on the market<sup>4</sup> or put it into service<sup>5</sup> unless it is safe<sup>6</sup>.

The regulations apply to machinery of the following categories<sup>7</sup>:

667 (1) assemblies which fall within one of the following descriptions:

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158. (a) an assembly, fitted with or intended to be fitted with a drive system other than directly applied human or animal effort, consisting of linked parts or components, at least one of which moves, and which are joined together for a specific application;

159. (b) an assembly as referred to in head (a) above, missing only the components to connect it on site or to sources of energy and motion;

160. (c) an assembly as referred to in head (a) or (b) above, ready to be installed and able to function as it stands only if mounted on a means of transport, or installed in a building or structure;

161. (d) assemblies of machinery as referred to in heads (a), (b) and (c) above or partly completed machinery, which, in order to achieve the same end, are arranged and controlled so that they function as an integral whole;

162. (e) an assembly of linked parts or components, at least one of which moves and which are joined together, intended for lifting loads and whose only power source is directly applied human effort<sup>8</sup>;

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668 (2) devices which, after the putting into service of machinery or of a tractor, are assembled with that machinery or tractor by operators themselves in order to change its function or attribute a new function, in so far as they are not tools ('interchangeable equipment')<sup>9</sup>;

669 (3) components ('safety components'):

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163. (a) which serve to fulfil a safety function;

164. (b) which are independently placed on the market;

165. (c) the failure or malfunction of which endangers the safety of persons; and

166. (d) which are not necessary in order for the machinery to function, or for which other components which do not fall within heads (a) to (c) above may be substituted in order for the machinery to function<sup>10</sup>;

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670 (4) components or equipment (including slings and their components) which: (a) are not attached to lifting machinery; (b) allow a load to be held; (c) are placed between the machinery and the load or on the load itself, or are intended to constitute an integral part of the load; and (d) are independently placed on the market ('lifting accessories')<sup>11</sup>;

- 671 (5) chains, ropes and webbing designed and constructed for lifting purposes as part of lifting machinery or lifting accessories ('chains, ropes and webbing')<sup>12</sup>; and
- 672 (6) removable components for transmitting power between self-propelled machinery or a tractor and another machine<sup>13</sup> by joining them at the first fixed bearing ('removable mechanical transmission devices') (when such components are placed on the market with a guard the components and the guard together are to be regarded as one product)<sup>14</sup>.

Before machinery is placed on the market or put into service, the responsible person must:

- 673 (i) ensure that the applicable<sup>15</sup> essential health and safety requirements are satisfied in respect of it<sup>16</sup>;
- 674 (ii) ensure that the technical file is compiled and made available in accordance with the prescribed<sup>17</sup> requirements<sup>18</sup>;
- 675 (iii) provide, in particular, the information necessary to operate it safely, such as instructions<sup>19</sup>;
- 676 (iv) follow<sup>20</sup>, as appropriate, the prescribed<sup>21</sup> conformity assessment procedure<sup>22</sup>;
- 677 (v) draw up the EC declaration of conformity<sup>23</sup> and ensure that a copy of it accompanies the machinery and that the original is retained in accordance with the prescribed<sup>24</sup> requirements<sup>25</sup>; and
- 678 (vi) affix the CE marking to the machinery visibly, legibly and indelibly and as prescribed<sup>26</sup>.

In order to comply with the above requirements<sup>27</sup>, a responsible person must carry out, or procure the carrying out of, all the necessary research and tests on components, fittings or the completed machinery to determine whether, by its design and construction, it is capable of being assembled and put into service safely<sup>28</sup>. Where the specified conformity assessment procedure<sup>29</sup> has been followed and a type-examination certificate has been issued in respect of machinery, the manufacturer must comply with the prescribed ongoing obligations of manufacturers<sup>30</sup> in respect of that machinery<sup>31</sup>. Where the specified conformity assessment procedure<sup>32</sup> has been followed and a quality system has been approved in respect of machinery, the manufacturer must comply with the ongoing prescribed obligations of manufacturers<sup>33</sup> in respect of that machinery<sup>34</sup>.

Further, a person who is not a responsible person must not put machinery into service unless it satisfies the applicable essential health and safety requirements and is safe<sup>35</sup>.

Before partly completed machinery is placed on the market, the responsible person must ensure that:

- 679 (A) the relevant technical documentation is prepared and made available<sup>36</sup>;
- 680 (B) assembly instructions are prepared<sup>37</sup>;
- 681 (C) a declaration of incorporation has been drawn up<sup>38</sup>, and a copy of it accompanies the machinery and the original is retained<sup>39</sup> for the prescribed period<sup>40</sup>.

The assembly instructions and the declaration of incorporation must accompany partly completed machinery until it is incorporated into machinery<sup>41</sup>. After partly completed machinery is incorporated into machinery its assembly instructions and declaration of incorporation form part of the technical file for that machinery<sup>42</sup>.

In order to comply with the above requirements<sup>43</sup>, a responsible person must carry out, or procure the carrying out of, all the necessary research and tests on components, fittings or the



partly completed machinery to determine whether, by its design and construction, it is capable of being assembled and used safely<sup>44</sup>.

1 'Responsible person' means, in relation to machinery or partly completed machinery, (1) the manufacturer of that machinery or partly completed machinery; or (2) the manufacturer's authorised representative: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2). As to the meaning of 'machinery' and 'partly completed machinery' see note 3. 'Manufacturer' means, in relation to machinery or partly completed machinery (a) a person who designs or manufactures that machinery or partly completed machinery either with a view to its being placed on the market under that person's own name or trademark or for that person's own use in an EEA state; or (b) if there is no such person, the person who places that machinery or partly completed machinery on the market or puts it into service: reg 2(2). As to the meaning of 'place on the market' see note 4. 'Authorised representative' means a person established in an EEA state who has received a written mandate from the manufacturer to perform, on the manufacturer's behalf, all or part of the obligations and formalities imposed on manufacturers (either as 'manufacturers' or 'responsible persons') by the 2008 regulations or otherwise in connection with European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) of 17 May 2006 on machinery (the 'Machinery Directive'): Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(1)(a), (2). As to an importer's liability for injury under the former Machinery Directive (European Parliament and Council Directive 98/37 (OJ L207, 23.7.1998, p 1) (repealed)) see Case C-40/04 *Criminal proceedings concerning Yonemoto* [2005] All ER (D) 61 (Sep), ECJ. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

2 le for the purposes of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597: see the text and notes 3-44; and PARAS 534-543. Those regulations come into force on 29 December 2009 (reg 1(1)), revoking as from that date (see reg 1(2), Sch 1) the Supply of Machinery (Safety) Regulations 1992, SI 1992/3073; but this title is written on the basis that the 2008 regulations are in force.

The Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, apply (1) to products in respect of which the following conditions are satisfied: (a) that they fall within one of the descriptions of products specified in reg 4(2); (b) that they do not fall within any of the categories of products specified in Sch 3 as being products to which the 2008 regulations do not apply; (c) that they are placed on the market or put into service on or after 29 December 2009; and (d) that the regulations are not disapplied in respect of them by reg 5; and (2) to partly completed machinery (reg 4(1)). The regulations do not apply to a product if, or to the extent that, Community directives other than the Machinery Directive, which apply to it, make more specific provision than the Directive in connection with the hazards referred to in Annex I: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 5. Annexes I-XI to the Machinery Directive are set out in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pts 1-11 respectively: see reg 2(1)(b).

The regulations do not have effect in relation to portable cartridge-operated fixing machinery or other impact machinery before 29 June 2011, but do have effect in relation to such machinery from that date: reg 28.

Criminal proceedings relating to unsafe machinery may be brought either under the 2008 regulations or under the Health and Safety at Work Act 1974: see *R (on the application of Junttan Oy) v Bristol Magistrates' Court* [2003] UKHL 55, [2004] 2 All ER 555, [2003] ICR 1475; and PARA 881.

As to the disapplication of certain other statutory requirements relating to the safety of machinery see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 27.

3 The word 'machinery' refers to products of any of the descriptions specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2) (see heads (1)-(6) in the text) in respect of which the conditions specified in reg 4(1)(a)(ii), (iii) and (iv) are satisfied: regs 2(2), 4(3). However, where an essential health and safety requirement is expressed to apply both to 'machinery' generally and to a particular description of machinery referred to in reg 4(2)(b), (c), (d), (e) or (f), the general reference to 'machinery' is to be understood (1) as not referring to machinery of that particular description; and (2) as referring only to those descriptions of machinery referred to in reg 4(2) for which the hazard corresponding to that essential health and safety requirement exists when they are used under the conditions foreseen by the responsible person or in foreseeable abnormal situations: reg 4(4). 'Essential health and safety requirements' means the requirements set out in Sch 2 Pt 1 sections 1-6, read in the light of the general principles set out at the start of that Part: regs 2(1)(b), (2); see PARA 534. Provisions of the 2008 regulations which refer to 'partly completed machinery' apply to drive systems and other assemblies which (a) are almost machinery; (b) cannot in themselves perform a specific application; and (c) are only intended to be incorporated into or assembled with other machinery or other partly completed machinery or equipment, thereby forming machinery: reg 6(1). However, this does not apply to assemblies of the kind described above which (i) are placed on the market before 29 December 2009; or (ii) are only intended to be incorporated into or assembled with other products to form a product which falls within any of the categories of products specified in Sch 3 (see note 7) as being products to which the regulations do not apply: reg 6(2).

4 References to placing machinery or partly completed machinery on the market are references to making it available in an EEA state (1) for the first time; (2) with a view to distribution or use, whether by the person

making it available or another; and (3) whether for reward or free of charge: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 2(2), 3(1)(a). For the purposes of the 2008 regulations, machinery or partly completed machinery is not to be regarded as being placed on the market or put into service where (a) it does not have affixed to it either the CE marking, or any inscription likely to be confused with the CE marking; and (i) it will not be put into service in an EEA state; (ii) it is imported into an EEA state for re-export to a country which is not an EEA state; or (iii) it is imported into an EEA state other than in the course of a business by a person who intends to use it other than in the course of a business; or (b) it is shown at a trade fair, exhibition or other similar demonstration; provided that, where any machinery or partly completed machinery which does not comply with the requirements of the regulations which would apply to it but for head (b) is shown at a trade fair, exhibition or other similar demonstration, the responsible person (i) displays a notice in relation to it, stating that it does not comply with the requirements of the regulations and that it will not be made available until it does comply with those requirements; and (ii) takes adequate safety measures to ensure that it does not kill or injure any person: reg 3(2). 'CE marking' means a mark consisting of the symbol 'CE' set out in the form shown in Sch 2 Pt 3: reg 2(2).

5 References to putting any machinery or partly completed machinery into service are references to the first time that it is used for its intended purpose in an EEA state: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 2(2), 3(1)(b).

6 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(1). 'Safe' means, in relation to machinery, that when it is properly installed and maintained, and used for the purposes for which it is intended, or under conditions which can reasonably be foreseen, it does not (1) endanger the health of, or result in death or injury to, any person; or (2) where appropriate, either endanger the health of, or result in death or injury to, domestic animals, or endanger property: reg 2(2). It has been held that the former Machinery Directive (European Parliament and Council Directive 98/37 (OJ L207, 23.7.1998, p 1) (repealed)) harmonises exhaustively the safety rules for the placing of machinery on the market at Community level, and therefore a member state cannot rely on a justification outside the framework of the Directive: Case C-470/03 *AGM-COS.MET Srl v Suomen valtio* [2007] All ER (EC) 1126, [2007] 2 CMLR 1054, ECJ.

7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2). The regulations do not apply to:

- 54 (1) safety components which are (a) intended to be used as spare parts to replace identical components; and (b) supplied by the manufacturer of the original machinery (Sch 3 para 1(a));
- 55 (2) equipment specifically for use in fairgrounds and/or amusement parks (Sch 3 para 1(b));
- 56 (3) machinery specially designed or put into service for nuclear purposes which, in the event of failure, may result in an emission of radioactivity (Sch 3 para 1(c));
- 57 (4) weapons, including firearms (Sch 3 para 1(d));
- 58 (5) the following means of transport:
  - 1. (a) agricultural and forestry tractors, in respect of the risks covered by European Parliament and EC Council Directive 2003/37 (OJ L171, 9.7.2003, p 1) on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units;  
1
  - 2. (b) motor vehicles and trailers as defined in European Parliament and EC Council Directive 2007/46 (OJ L263, 9.10.2007, p 1) establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, art 3(11), (12);  
2
  - 3. (c) vehicles covered by European Parliament and EC Council Directive 2002/24 (OJ L49, 22.2.2003, p 23) relating to the type-approval of two or three-wheel motor vehicles;  
3
  - 4. (d) motor vehicles exclusively intended for competition;  
4
  - 5. (e) means of transport by air, on water and on rail networks (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 3 para 1(e));  
5
- 59 (6) seagoing vessels, mobile offshore units and machinery installed on board such vessels or units (Sch 3 para 1(f));
- 60 (7) machinery specially designed and constructed for military or police purposes (Sch 3 para 1(g));

- 61 (8) machinery specially designed and constructed for research purposes for temporary use in laboratories (Sch 3 para 1(h));
- 62 (9) mine winding gear (Sch 3 para 1(i));
- 63 (10) machinery intended to move performers during artistic performances (Sch 3 para 1(j));
- 64 (11) electrical and electronic products falling within the following areas, in so far as they are covered by EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) on the harmonisation of the laws of member states relating to electrical equipment designed for use within certain voltage limits:
  - 6. (a) household appliances intended for domestic use;  
6
  - 7. (b) audio and video equipment;  
7
  - 8. (c) information technology equipment;  
8
  - 9. (d) ordinary office machinery;  
9
  - 10. (e) low-voltage switchgear and control gear;  
10
  - 11. (f) electric motors (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 3 para 1(k)); and  
11
- 65 (12) the following types of high-voltage electrical equipment:
  - 12. (a) switch gear and control gear; and  
12
  - 13. (b) transformers (Sch 3 para 1(l)).  
13

However, the regulations do apply to:

- 66 (i) machinery mounted on vehicles of the kinds specified in head (5)(a)-(c) above (Sch 3 para 2(a));
  - 67 (ii) products which (A) but for regs 4(1)(a)(iii) (see note 2 head (c)) and 6(2)(b) (see note 3 head (ii)) and head (5)(b) above, would be machinery or partly completed machinery; (B) fall within one of the categories specified in European Parliament and EC Council Directive 2007/46 (OJ L263, 9.10.2007, p 1) establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, art 2(3)(a)-(c) or 2(4)(b); and (c) are not excluded from the 2008 regulations by head (7) above (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 3 para 2(b)); and
  - 68 (iii) machinery mounted on the means of transport specified in head (5)(e) above (Sch 3 para 2(c)).
- 8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(a).
  - 9 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(b).
  - 10 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(c). Examples of safety components are listed in Sch 2 Pt 5.
  - 11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(d).
  - 12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(e).
  - 13 'Machine' means an item of machinery: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2).
  - 14 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 4(2)(f).

15 'Applicable' means, in relation to the application of essential health and safety requirements to any machine, those essential health and safety requirements which are expressed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 as applying either to all machinery or to machinery of a category to which that machine belongs or which has a characteristic that it shares: reg 2(2).

16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(a). For the purposes of reg 7(2)(a), machinery which is manufactured in conformity with a harmonised standard, the references to which have been published in the Official Journal of the European Union (a 'published harmonised standard') is presumed to comply with the essential health and safety requirements covered by that standard: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(4). 'Harmonised standard' means a non-binding technical specification adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI), on the basis of a remit issued by the EC Commission in accordance with the procedures laid down in European Parliament and EC Council Directive 98/34 (OJ L204, 21.7.1998, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2).

17 Ie in accordance with the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A.

18 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(b).

19 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(c).

20 'Follow', in relation to a responsible person and a conformity assessment procedure, means the responsible person complying with the requirements which the conformity assessment procedure, as expressed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8, Pt 9 or Pt 10, imposes on responsible persons: reg 2(2). As to the meaning of 'conformity assessment procedure' see note 21.

21 Ie the conformity assessment procedure prescribed by the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 10 or one of the conformity assessment procedures prescribed by reg 11 or reg 12 (see PARAS 538-541). 'Conformity assessment' means the assessment, in accordance with Sch 2 Pt 8, Pt 9 or Pt 10, of whether machinery, or a representative model of machinery, satisfies the applicable requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597; and 'conformity assessment procedure' means the procedures specified in any of those Annexes: reg 2(2).

22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(d).

23 Ie in accordance with the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 2 pt 1 section A.

24 Ie the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 2 pt 2 first para.

25 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(e).

26 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(f). The CE marking must be as prescribed in Sch 2 Pt 3.

27 Ie the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(1), (2).

28 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(3).

29 Ie specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 11(2)(b), 12(2)(a).

30 Ie prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.

31 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(5).

32 Ie specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 11(2)(c), 12(2)(b).

33 Ie prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10.

34 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(6).

35 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 9.

36    Ie in accordance with the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt B.

37    Ie in accordance with the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 6. The assembly instructions for partly completed machinery must contain a description of the conditions which must be met with a view to correct incorporation in the final machinery, so as not to compromise safety and health: Sch 2 Pt 6 first para. The assembly instructions must be written in an official Community language acceptable to the manufacturer of the machinery in which the partly completed machinery will be assembled, or to the manufacturer's authorised representative: Sch 2 Pt 6 second para. 'Official Community language' means an official language of an EEA state: reg 2(2).

38    Ie in accordance with the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 2 pt 1 section B.

39    Ie in accordance with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 2 pt 2, second para.

40    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 8(1).

41    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 8(2).

42    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 8(3).

43    Ie the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 8(1).

44    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 8(4).

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### 534. The essential health and safety requirements.

The obligations laid down by the essential health and safety requirements<sup>1</sup> only apply when the corresponding hazard exists for the machinery<sup>2</sup> in question when it is used under the conditions foreseen by the responsible person<sup>3</sup> or in foreseeable abnormal situations<sup>4</sup>. In any event, the principles of safety integration<sup>5</sup> and the obligations concerning marking of machinery and instructions<sup>6</sup> apply to all machinery covered by the relevant provisions<sup>7</sup>. The essential health and safety requirements are mandatory. However, taking into account the state of the art, it may not be possible to meet the objectives set by them. In that event, the machinery must, as far as possible, be designed and constructed with the purpose of approaching those objectives<sup>8</sup>.

The responsible person must ensure that a risk assessment is carried out in order to determine the health and safety requirements which apply to the machinery. The machinery must then be designed and constructed taking into account the results of the risk assessment<sup>9</sup>.

The essential health and safety requirements are grouped according to the hazards which they cover<sup>10</sup>. Those groupings are:

682 (1) general requirements, covering:

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- 167. (a) general principles<sup>11</sup>;
- 168. (b) controls<sup>12</sup>;
- 169. (c) protection against mechanical hazards<sup>13</sup>;
- 170. (d) required characteristics of guards and protective devices<sup>14</sup>;
- 171. (e) risks due to other hazards<sup>15</sup>;
- 172. (f) maintenance<sup>16</sup>;
- 173. (g) information<sup>17</sup>;

110

683 (2) supplementary requirements for certain categories of machinery<sup>18</sup> applying to:

111

- 174. (a) foodstuffs machinery and machinery for cosmetics or pharmaceutical products<sup>19</sup>;
- 175. (b) portable hand-held and/or hand-guided machinery<sup>20</sup>;
- 176. (c) machinery for working wood and materials with similar physical characteristics<sup>21</sup>;

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684 (3) supplementary requirements to offset hazards due to the mobility of machinery<sup>22</sup>, covering:

113

- 177. (a) work positions<sup>23</sup>;
- 178. (b) control systems<sup>24</sup>;
- 179. (c) protection against mechanical hazards<sup>25</sup>;
- 180. (d) protection against other hazards<sup>26</sup>;
- 181. (e) information and indications<sup>27</sup>;

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685 (4) supplementary requirements to offset hazards due to lifting operations<sup>28</sup>, covering:

115

182. (a) general requirements relating to protection against mechanical hazards and fitness for purpose<sup>29</sup>;

183. (b) requirements for machinery whose power source is other than manual effort<sup>30</sup>;

184. (c) information and markings<sup>31</sup>;

185. (d) instructions<sup>32</sup>;

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686 (5) supplementary requirements for machinery intended for underground work<sup>33</sup>;

687 (6) supplementary requirements for machinery presenting particular hazards due to the lifting of persons<sup>34</sup>.

1 As to the meaning of 'essential health and safety requirements' see PARA 533 note 3.

2 As to the meaning of 'machinery' see PARA 533 note 3.

3 As to the meaning of 'responsible person' see PARA 533 note 1.

4 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 general principles point 2. As to the commencement of those regulations see PARA 533 note 2.

5 Ie the principles referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.1.2: see note 11.

6 Ie the obligations referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 1.7.3 and 1.7.4.

7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 general principles point 2.

8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 general principles point 3.

9 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 general principles point 1. By the iterative process of risk assessment and risk reduction referred to in the text, the responsible person must (1) determine the limits of the machinery, which include the intended use and any reasonably foreseeable misuse thereof; (2) identify the hazards that can be generated by the machinery and the associated hazardous situations; (3) estimate the risks, taking into account the severity of the possible injury or damage to health and the probability of its occurrence; (4) evaluate the risks, with a view to determining whether risk reduction is required, in accordance with the objective of the Machinery Directive; (5) eliminate the hazards or reduce the risks associated with these hazards by application of protective measures, in the order of priority established in Sch 2 Pt 1 section 1.1.2(b): Sch 2 Pt 1 general principles point 1.

10 The requirements are organised in several sections. The first section has a general scope and is applicable to all kinds of machinery. The other sections refer to certain kinds of more specific hazards. Nevertheless, it is essential to examine the whole of the requirements in order to be sure of meeting all the applicable essential requirements. When machinery is being designed, the requirements of the general section and the requirements of one or more of the other sections must be taken into account, depending on the results of the risk assessment carried out in accordance with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 general principles point 1: Sch 2 Pt 1 general principles point 4.

11 The principles of safety integration are as follows, and are of general application (see the text to note 5): (1) machinery must be designed and constructed so that it is fitted for its function, and can be operated, adjusted and maintained without putting persons at risk when these operations are carried out under the conditions foreseen but also taking into account any reasonably foreseeable misuse thereof; the aim of measures taken must be to eliminate any risk throughout the foreseeable lifetime of the machinery including the phases of transport, assembly, dismantling, disabling and scrapping; (2) in selecting the most appropriate methods, the responsible person must apply the following principles, in the order given: (a) eliminate or reduce risks as far as possible (inherently safe machinery design and construction); (b) take the necessary protective measures in relation to risks that cannot be eliminated; (c) inform users of the residual risks due to any shortcomings of the protective measures adopted, indicate whether any particular training is required and specify any need to provide personal protective equipment; (3) when designing and constructing machinery and when drafting the instructions, the responsible person must envisage not only the intended use of the machinery but also any reasonably foreseeable misuse thereof; the machinery must be designed and constructed in such a way as to prevent abnormal use if such use would engender a risk; where appropriate, the instructions must draw the user's attention to ways (which experience has shown might occur) in which the

machinery should not be used; (4) machinery must be designed and constructed to take account of the constraints to which the operator is subject as a result of the necessary or foreseeable use of personal protective equipment; (5) machinery must be supplied with all the special equipment and accessories essential to enable it to be adjusted, maintained and used safely: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.1.2.

Other general requirements cover materials and products (Sch 2 Pt 1 section 1.1.3); lighting (Sch 2 Pt 1 section 1.1.4); design of machinery to facilitate its handling (Sch 2 Pt 1 section 1.1.5); ergonomics (Sch 2 Pt 1 section 1.1.6); operating positions (Sch 2 Pt 1 section 1.1.7); and seating (Sch 2 Pt 1 section 1.1.8).

12 The relevant requirements relate to safety and reliability of control systems (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.2.1); control devices (Sch 2 Pt 1 section 1.2.2); starting (Sch 2 Pt 1 section 1.2.3); stopping device (Sch 2 Pt 1 section 1.2.4); selection of control or operating modes (Sch 2 Pt 1 section 1.2.5); and failure of the power supply (Sch 2 Pt 1 section 1.2.6).

13 The relevant requirements cover risk of loss of stability (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.3.1); risk of break-up during operation (Sch 2 Pt 1 section 1.3.2); risks due to falling or ejected objects (Sch 2 Pt 1 section 1.3.3); risks due to surfaces, edges or angles (Sch 2 Pt 1 section 1.3.4); risks related to combined machinery (Sch 2 Pt 1 section 1.3.4); risks relating to variations in operating conditions (Sch 2 Pt 1 section 1.3.6); risks related to moving parts (Sch 2 Pt 1 section 1.3.7); choice of protection against risks arising from moving parts (Sch 2 Pt 1 section 1.3.8); and risks of uncontrolled movements (Sch 2 Pt 1 section 1.3.9).

14 Guards and protective devices must (1) be of robust construction; (2) be securely held in place; (3) not give rise to any additional hazard; (4) not be easy to by-pass or render non-operational; (5) be located at an adequate distance from the danger zone; (6) cause minimum obstruction to the view of the production process; and (7) enable essential work to be carried out on the installation and/or replacement of tools and for maintenance purposes by restricting access exclusively to the area where the work has to be done, if possible without the guard having to be removed or the protective device having to be disabled: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.4.1. In addition, guards must, where possible, protect against the ejection or falling of materials or objects and against emissions generated by the machinery: Sch 2 Pt 1 section 1.4.1. Specific requirements cover fixed guards (Sch 2 Pt 1 section 1.4.1.1); interlocking movable guards (Sch 2 Pt 1 section 1.4.2.2); adjustable guards restricting access (Sch 2 Pt 1 section 1.4.2.3); and special requirements for protective devices (Sch 2 Pt 1 section 1.4.3).

15 The relevant requirements cover electricity supply (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.5.1); static electricity (Sch 2 Pt 1 section 1.5.2); energy supply other than electricity (Sch 2 Pt 1 section 1.5.3); errors of fitting (Sch 2 Pt 1 section 1.5.4); extreme temperatures (Sch 2 Pt 1 section 1.5.5); fire (Sch 2 Pt 1 section 1.5.6); explosion (Sch 2 Pt 1 section 1.5.7); noise (Sch 2 Pt 1 section 1.5.8); vibrations (Sch 2 Pt 1 section 1.5.9); radiation (Sch 2 Pt 1 section 1.5.10); external radiation (Sch 2 Pt 1 section 1.5.11); laser radiation (Sch 2 Pt 1 section 1.5.12); emissions of hazardous materials and substances (Sch 2 Pt 1 section 1.5.13); risk of being trapped in a machine (Sch 2 Pt 1 section 1.5.14); risk of slipping, tripping or falling (Sch 2 Pt 1 section 1.5.15); and lightning (Sch 2 Pt 1 section 1.5.16).

16 The relevant requirements cover machinery maintenance generally (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.6.1); access to operating position and servicing points (Sch 2 Pt 1 section 1.6.2); isolation of energy sources (Sch 2 Pt 1 section 1.6.3); operator intervention (Sch 2 Pt 1 section 1.6.4); and cleaning of internal parts (Sch 2 Pt 1 section 1.6.5).

17 The relevant requirements cover information and warnings on the machinery, ie information and information devices, and warning devices (Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.7.1); warning of residual risks (Sch 2 Pt 1 section 1.7.2); marking of machinery (Sch 2 Pt 1 section 1.7.3); and instructions, including sales literature (Sch 2 Pt 1 section 1.7.4). The requirements regarding marking and instructions are of general application: see the text to note 6.

18 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 2.

19 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 2.1.

20 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 2.2.

21 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 2.3.

22 Machinery presenting hazards due to its mobility must meet all the essential health and safety requirements described in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3 (see note 10): Sch 2 Pt 1 section 3.

23 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3.2.



- 24 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3.3.
- 25 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3.4.
- 26 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3.5.
- 27 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 3.6.
- 28 Machinery presenting hazards due to lifting operations must meet all the essential health and safety requirements described in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 4 (see note 10): Sch 2 Pt 1 section 4.
- 29 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 4.1.2-4.1.3.
- 30 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 4.2.1-4.2.3.
- 31 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 4.3.1-4.3.3.
- 32 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 4.4.1-4.4.2.
- 33 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 5.1-5.6. Machinery intended for underground work must meet all the essential health and safety requirements described in Sch 2 Pt 1 section 5 (see note 10): Sch 2 Pt 1 section 5.
- 34 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 sections 6.1-6.5. Machinery presenting hazards due to the lifting of persons must meet all the essential health and safety requirements described in Sch 2 Pt 1 section 6 (see note 10): Sch 2 Pt 1 section 6.

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## **(ii) Conformity Assessment**

### **A. NOTIFIED BODIES**

#### **535. Designation and monitoring of UK notified bodies.**

The Secretary of State<sup>1</sup> may designate a person to carry out conformity assessment<sup>2</sup>. With one exception<sup>3</sup>, any such designation (a 'notified body designation') must be made in accordance with the following procedure<sup>4</sup>. Any person wishing to be a UK notified body<sup>5</sup> must apply to the Secretary of State for designation<sup>6</sup>. A notified body designation must not be made unless the Secretary of State is satisfied that the person in respect of whom it is to be made meets the specified criteria<sup>7</sup> (the 'notified body criteria')<sup>8</sup>. A person who meets the assessment criteria laid down in a published harmonised standard<sup>9</sup> is presumed to meet that part of the notified body criteria which corresponds to the criteria in that standard<sup>10</sup>.

A notified body designation (1) must be in writing; (2) must specify the conformity assessment procedures that the person designated may carry out; (3) may relate to all the categories of machinery listed in Annex IV to the Machinery Directive<sup>11</sup> or to such of those categories as are specified in the designation; (4) may designate a person for a specified period; and (5) may be made subject to such other conditions as are specified in the designation, including conditions which are to apply upon or following termination of the designation<sup>12</sup>. In making a notified body designation the Secretary of State may have regard (in addition to the notified body criteria) to any other matter which appears to the Secretary of State to be relevant<sup>13</sup>.

A person in respect of whom a notified body designation has been made and whose designation has been notified by the Secretary of State to the European Commission and the other EEA states<sup>14</sup>, is a 'UK notified body' to the extent that that designation remains in effect<sup>15</sup>.

The Secretary of State must, from time to time, publish a list of UK notified bodies, identifying, in the case of each UK notified body, the description of machinery for which that notified body is designated<sup>16</sup>. The Secretary of State must, from time to time, carry out an inspection of each UK notified body with a view to verifying that it (a) meets the notified body criteria; (b) complies with any condition to which its designation is subject; and (c) complies with the relevant regulations<sup>17</sup>. A UK notified body must comply with any request of the Secretary of State to provide information relevant to determining its compliance with the notified body criteria, the relevant regulations, or any condition to which its designation is subject<sup>18</sup>.

A notified body designation which does not designate a person as a UK notified body for a specified period has effect until such time as it is terminated<sup>19</sup>. A notified body designation which designates a person as a UK notified body for a specified period expires in accordance with its terms unless the period so specified is extended or shortened<sup>20</sup> before the date on which it had been due to expire<sup>21</sup>. The Secretary of State may vary any aspect of a notified body designation if the UK notified body so requests or it appears to the Secretary of State necessary or expedient to do so<sup>22</sup>.

The Secretary of State may terminate a notified body designation (i) on the expiry of 90 days' notice in writing at the request of the UK notified body; (ii) if it appears to the Secretary of

State that any condition of the designation is not complied with; or (iii) if the Secretary of State considers that the UK notified body no longer satisfies the notified body criteria<sup>23</sup>.

Where the Secretary of State is minded to vary a notified body designation on the ground that it appears necessary or expedient to do so, or to terminate a notified body designation under head (ii) or (iii) above, the Secretary of State must give notice in writing to the UK notified body of the proposed variation or termination and the reasons for it, stating that the UK notified body has 21 days from the date of the notice in which to make representations to the Secretary of State in respect of the proposed variation or termination, and must consider any representations received from the UK notified body in accordance with the notice<sup>24</sup>.

If a notified body designation is terminated, the Secretary of State may, by notice in writing (A) authorise another UK notified body to take over the functions of the UK notified body whose designation has been terminated in respect of such cases as are specified in the notice; and (B) give such directions as the Secretary of State considers appropriate (either to the UK notified body whose designation has been terminated or to another UK notified body) in respect of a UK notified body's files or any other matter which the Secretary of State considers expedient for the purposes of ensuring that another notified body carries out the functions of a notified body for the existing customers of the notified body whose designation has been terminated<sup>25</sup>.

1 As to the Secretary of State see PARA 349 et seq.

2 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(1). As to the commencement of those regulations see PARA 533 note 2. As to the meaning of 'conformity assessment' see PARA 533 note 21. As to conformity assessment procedure see PARAS 538-541.

3 Ie except as provided in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(4): see note 15.

4 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(2).

5 'UK notified body' has the meaning given in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(3), (4): reg 2(2). See the text and notes 14-15.

6 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(5).

7 Ie the criteria specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 11, as follows. The body, its director and the staff responsible for carrying out the verification tests must not be the designer, manufacturer, supplier or installer of machines which they inspect, nor the authorised representative of any of these parties. They must not become involved, either directly or as authorised representatives, in the design, construction, marketing or maintenance of the machines. This does not preclude the possibility of exchanges of technical information between the manufacturer and the body (Sch 2 Pt 11 para 1). The body and its staff must carry out the verification tests with the highest degree of professional integrity and technical competence and be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of the inspection, especially from persons or groups of persons with an interest in the result of verifications (Sch 2 Pt 11 para 2). For each category of machinery for which it is notified, the body must possess personnel with technical knowledge and sufficient and appropriate experience to perform a conformity assessment. It must have the means necessary to complete the technical and administrative tasks connected with implementation of the checks in an appropriate manner; it must also have access to the equipment necessary for the exceptional checks (Sch 2 Pt 11 para 3). The staff responsible for inspection must have (1) sound technical and vocational training; (2) satisfactory knowledge of the requirements of the tests they carry out and adequate experience of such tests; (3) the ability to draw up the certificates, records and reports required to authenticate the performance of the tests (Sch 2 Pt 11 para 4). The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests carried out or on the results of such tests (Sch 2 Pt 11 para 5). The body must satisfy the Secretary of State that it has adequate civil liability insurance (Sch 2 Pt 11 para 6). The staff of the body must be bound to observe professional secrecy with regard to all information obtained in carrying out its tasks (except vis-à-vis the Secretary of State) under the 2008 regulations (Sch 2 Pt 11 para 7). Notified bodies must participate in coordination activities. They must also take part directly or be represented in European standardisation, or ensure that they know the situation in respect of relevant standards (Sch 2 Pt 11 para 8).

8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(6).

9 As to the meaning of 'published harmonised standard' see PARA 533 note 16.

- 10 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(7).
- 11 Ie European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery (the 'Machinery Directive') Annex IV: see PARA 538 note 3. As to the meaning of 'machinery' see PARA 533 note 3.
- 12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(8).
- 13 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(9).
- 14 Ie under European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) art 14(1). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.
- 15 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(3). If a person holds an appointment as a United Kingdom approved body under the Supply of Machinery (Safety) Regulations 1992, SI 1992/3073 (revoked as from 29 December 2009), which has been notified to the European Commission and the other EEA states under EC Council Directive 98/37 (OJ L207, 23.7.1998, p 1) art 9(1) (repealed) and has not been terminated, (1) the appointment is a 'notified body designation' for the purposes of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, and it must be varied in accordance with reg 17 (see the text to note 24) to the extent that it is necessary or expedient to vary it to take account of the repeal of EC Council Directive 98/37 (OJ L207, 23.7.1998, p 1) and the revocation of the 1992 regulations and their replacement by the Machinery Directive and the 2008 regulations; and (2) that person is a 'UK notified body' to the extent that the appointment remains in effect: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(4).
- 16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(10).
- 17 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(11).
- 18 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 16(12).
- 19 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(1). As to termination see the text to note 23.
- 20 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(3): see the text to note 22.
- 21 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(2).
- 22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(3).
- 23 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(4).
- 24 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(5).
- 25 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 17(6).

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### **536. Functions of UK notified bodies.**

Subject to the terms of their notified body designations<sup>1</sup>, UK notified bodies<sup>2</sup> must carry out the specified<sup>3</sup> functions of notified bodies<sup>4</sup>. However, a UK notified body is not obliged to carry out these functions where (1) the documents submitted to it in relation to the carrying out of any such function (other than the instructions for the machinery<sup>5</sup>) are not in English or another language acceptable to the body; (2) the responsible person<sup>6</sup> has not submitted with its application the amount of the fee which the body requires to be submitted with the application<sup>7</sup>; or (3) the body reasonably believes that, having regard to the number of outstanding applications made to it in relation to its appointment under the relevant regulations<sup>8</sup>, it will be unable to carry out the required work within three months of receiving the application<sup>9</sup>.

If, having issued a certificate to a responsible person<sup>10</sup> or an approval to a manufacturer<sup>11</sup>, a UK notified body finds (a) that the manufacturer has, after the issue of that certificate or approval, failed to satisfy applicable requirements of the relevant regulations in respect of the machinery to which the certificate or approval relates (whether or not such failure is continuing); or (b) that the certificate or approval should not have been issued, it must proceed in the following manner<sup>12</sup>. The UK notified body concerned must (i) consider what corrective action, if any, the manufacturer should take in the light of its findings and whether, and, if so, on what terms, the certificate or approval should be suspended, withdrawn, or made subject to restrictions; (ii) send to the manufacturer a notice in writing, setting out the conclusions it has provisionally reached under head (i) above, and the reasons for those conclusions, and invite the manufacturer to respond to them within such reasonable period of time as is specified in the notice; (iii) make a decision on the matters specified in head (i) above, including provision for the suspension or withdrawal of a certificate or approval, or making it subject to restrictions, if it considers the taking of any such action appropriate, having regard to the manufacturer's response, the principle of proportionality and whether the manufacturer has taken appropriate corrective measures<sup>13</sup>; and (iv) communicate the decision, with a detailed statement of the reasons for it, to the manufacturer<sup>14</sup>.

Where a UK notified body, acting under the above provisions, suspends or withdraws a certificate, or makes it subject to restrictions, or considers that action by an enforcement authority<sup>15</sup> may prove necessary in connection with the machinery which is the subject of its decision, it must communicate its decision to the enforcement authorities and the Secretary of State<sup>16</sup> (if the Secretary of State is not an enforcement authority in relation to the machinery concerned)<sup>17</sup>.

An appeal may be made<sup>18</sup> (A) by a manufacturer who is aggrieved by a decision which a UK notified body has made as to corrective action to be taken or as to the suspension, withdrawal etc of a certificate or approval<sup>19</sup>; or (B) by a responsible person who is aggrieved by a decision of a UK notified body not to issue a type-examination certification<sup>20</sup> or in relation to a quality system which is notified<sup>21</sup> to a responsible person<sup>22</sup>.

1 As to notified body designations see PARA 535.

2 As to the meaning of 'UK notified body' see PARA 535.

3     le the functions specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pts 9, 10: see PARAS 540-541.

4     Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(1). As to the commencement of those regulations see PARA 533 note 2. 'Notified body' means (1) a UK notified body; (2) a person designated as a notified body for the purposes of the Machinery Directive (ie European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery) by another EEA state and notified by that state to the European Commission and the other EEA states under art 14(1) of that Directive; or (3) a person recognised for the purpose of carrying out the functions of a notified body under the Machinery Directive under or by virtue of either a mutual recognition agreement relating to that Directive or a similar agreement (including a Protocol to a Europe Agreement, or another Agreement, on Conformity Assessment and Acceptance of Industrial Products), which has been concluded between the European Community and a state other than an EEA state: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

5     As to the meaning of 'machinery' see PARA 533 note 3.

6     As to the meaning of 'responsible person' see PARA 533 note 1.

7     A UK notified body may charge such fees in connection with, or incidental to, carrying out its functions under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18 as it may determine; provided that such fees must not exceed the sum of (1) the costs incurred or to be incurred by the body in performing the relevant functions; plus (2) an amount on account of profit which is reasonable in the circumstances having regard to (a) the character and extent of the work done or to be done by the body on behalf of the responsible person; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 19(1). A UK notified body may require the payment of fees or a reasonable estimate of fees in advance of carrying out the work required by the responsible person: reg 19(2).

8     le the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597.

9     Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(2).

10    le under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9: see PARA 540.

11    le under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10: see PARA 541. As to the meaning of 'manufacturer' see PARA 533 note 1.

12    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(3).

13    In making a decision under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(4), a UK notified body must not suspend or withdraw a certificate or approval, or make it subject to restrictions, if the manufacturer has ensured compliance with the applicable requirements of those regulations by means of appropriate corrective measures: reg 18(6).

14    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(4).

15    'Enforcement authority' means (1) in Great Britain, subject to head (2) below, (a) in relation to machinery and partly completed machinery for use at work, the Health and Safety Executive; and (b) in relation to any other machinery or partly completed machinery, within each local weights and measures authority's area, that authority or the Secretary of State; (2) the Office of Rail Regulation where, in Great Britain, the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, make it the enforcing authority, within the meaning of the Health and Safety at Work etc Act 1974 s 18(7) (see PARA 368), in relation to machinery for use in the operation of a railway, tramway or any other system of guided transport, as defined in the 2006 regulations: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2). As to the meaning of 'partly completed machinery' see PARA 533 note 3. 'Use at work' means, in relation to machinery or partly completed machinery, use or operation (i) by persons at work (whether exclusively or not); or (ii) otherwise than at work, in non-domestic premises made available to persons at a place where they may use the machinery or partly completed machinery provided for their use there; and for these purposes, 'at work' has the same meaning as it does under or by virtue of the Health and Safety at Work etc Act 1974 s 52 for the purposes of Part I (ss 1-53) of that Act: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 2(2). As to the meaning of 'Great Britain' see PARA 305 note 7. As to the Health and Safety Executive see PARA 361 et seq. As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20. As to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 49 et seq.

16    As to the Secretary of State see PARA 349 et seq.

17    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(5).

18 In accordance with the provisions of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4: see PARA 537.

19 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(4).

20 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 5: see PARA 540 text and note 16.

21 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3: see PARA 541 text and notes 12-17.

22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(7).

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### **537. Appeals against notified body decisions.**

Where a manufacturer<sup>1</sup> or authorised representative<sup>2</sup> (the 'appellant') is aggrieved by one of the specified<sup>3</sup> kinds of decision of a UK notified body<sup>4</sup> (the 'decision'), the grounds on which such an appeal may be made are that, in reaching the decision, the UK notified body (the 'respondent') made a material error of law or fact<sup>5</sup>. Any such appeal must be made to the Secretary of State<sup>6</sup> and heard by a person appointed by the Secretary of State, on such terms as the Secretary of State sees fit, to hear one or more appeals (an 'appeal officer')<sup>7</sup>.

An appeal must be made by giving a notice of appeal in writing to the Secretary of State so as to be received by the Secretary of State within one month of the date upon which the decision was notified to the appellant<sup>8</sup>. On receiving the notice of appeal, the Secretary of State must (1) send a copy of the notice, indorsed with the date of receipt, to the respondent; (2) send an acknowledgment of its receipt to the appellant; (3) forward the notice of appeal, indorsed with the date of receipt, to the appeal officer; and (4) notify the appellant and the respondent of the arrangements for communicating with the appeal officer<sup>9</sup>.

The respondent may make a written response to the notice of appeal. Any such written response must be sent to the appeal officer so as to be received by the appeal officer within one month of the date on which the Secretary of State received the notice of appeal or such further time as the appeal officer may allow<sup>10</sup>. The appeal officer must send a copy of the written response to the appellant<sup>11</sup>. The appeal officer may (a) give the appellant and the respondent the opportunity to make further written or oral representations; and (b) specify the time and manner in which such further representations are to be made<sup>12</sup>.

The appeal officer may make inquiries of any person, receive representations from any person, hold any meeting or hearing and subject to the provisions of the relevant regulations<sup>13</sup>, follow such practice and procedure, as the appeal officer thinks fit, having regard to the just, expeditious and economical conduct of the appeal<sup>14</sup>. The appeal officer may specify the time and place at which any meeting or hearing is to be held<sup>15</sup>.

In determining an appeal, the appeal officer must (i) dismiss the appeal; (ii) allow the appeal; or (iii) remit the decision to the respondent<sup>16</sup>. Where a decision is remitted the respondent must reconsider it in accordance with any rulings of law and findings of fact made by the appeal officer<sup>17</sup>. The appeal officer may dismiss an appeal at any stage if satisfied that (A) the notice of appeal discloses no valid ground of appeal; (B) the notice of appeal fails to comply with the relevant requirements<sup>18</sup>; or (C) the appellant is not entitled to bring the appeal<sup>19</sup>. If satisfied that the appeal was not brought within the specified time limit, the appeal officer must dismiss an appeal, unless satisfied that the circumstances are exceptional<sup>20</sup>. The appeal officer may dismiss an appeal at any stage at the request of the appellant<sup>21</sup>.

The appeal officer must give the appellant and the respondent reasons for any decision to dismiss an appeal, allow an appeal or remit a decision to the respondent<sup>22</sup>.

1 As to the meaning of 'manufacturer' see PARA 533 note 1.

2 As to the meaning of 'authorised representative' see PARA 533 note 1.

3 I.e. the kinds of decision specified in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(7): see PARA 536.



4 As to the meaning of 'UK notified body' see PARA 535; and as to the meaning of 'notified body' see PARA 536 note 4.

5 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 18(7), Sch 4 para 1. As to the commencement of those regulations see PARA 533 note 2.

6 As to the Secretary of State see PARA 349 et seq.

7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 2. In Sch 4, 'appeal officer' means the person who hears a particular appeal: Sch 4 para 2. No person may be appointed as an appeal officer unless the Secretary of State considers that that person has sufficient knowledge and experience, or sufficiently ready access to independent sources of technical or legal expertise, to be able to reach independent, impartial and properly informed decisions on the appeals which that person is appointed to hear: Sch 4 para 3.

8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 4. The notice of appeal must (1) state the name and address of the appellant and an address for service; (2) concisely state the grounds for the appeal and the arguments supporting each ground; (3) contain a schedule listing any documents annexed to it; (4) be accompanied by a copy of the decision and, as far as practicable, every other document on which the appellant relies; (5) be signed and dated by the appellant, or on the appellant's behalf by the appellant's duly authorised officer or legal representative: Sch 4 para 6.

9 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 5.

10 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 7.

11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 8.

12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 9.

13 Ie the provisions of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4.

14 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 10.

15 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 11.

16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 12.

17 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 13.

18 Ie the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 6: see note 8.

19 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 14.

20 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 15.

21 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 16.

22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 4 para 17.

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## ***B. CONFORMITY ASSESSMENT PROCEDURES***

### **538. Conformity assessment procedures: in general.**

The conformity assessment procedure<sup>1</sup> for machinery<sup>2</sup> varies according to whether or not the machinery falls within a specified category. If machinery falls within a category which is not referred to in Annex IV to the Machinery Directive<sup>3</sup>, the responsible person<sup>4</sup> must follow<sup>5</sup> the conformity assessment procedure with internal checks on the manufacture of machinery prescribed<sup>6</sup> in respect of it<sup>7</sup>.

In the case of machinery which falls within a category which is referred to in Annex IV to the Machinery Directive and in respect of which both of the following conditions are satisfied: (1) that the machinery is manufactured in accordance with published harmonised standards<sup>8</sup>; and (2) that the published harmonised standards in accordance with which it is manufactured cover all the applicable essential health and safety requirements, the responsible person must follow one of the following conformity assessment procedures<sup>9</sup>:

- 688 (a) the conformity assessment procedure with internal checks on the manufacture of machinery mentioned above<sup>10</sup>; or
- 689 (b) the EC type-examination procedure<sup>11</sup> and the prescribed internal checks on the manufacture of machinery<sup>12</sup>; or
- 690 (c) the full quality assurance procedure<sup>13</sup>.

In the case of machinery which falls within a category which is referred to in Annex IV and in respect of which any of the following conditions is satisfied: (i) that the machinery is not manufactured in accordance with the published harmonised standards which relate to it; or (ii) that the machinery is only partly manufactured in accordance with the published harmonised standards which relate to it; or (iii) that the published harmonised standards in accordance with which the machinery is manufactured do not cover all the applicable essential health and safety requirements; or (iv) that no harmonised standards exist for the machinery, the responsible person must follow one of the conformity assessment procedures described in heads (b) and (c) above<sup>14</sup>.

1 As to the meaning of 'conformity assessment procedure' see PARA 533 note 21.

2 As to the meaning of 'machinery' see PARA 533 note 3.

3 ie which is not referred to in European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery, Annex IV, set out in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 4. As to Sch 2 see PARA 533 note 2. As to the commencement of the 2008 regulations see PARA 533 note 2. The machinery so referred to is:

69 (1) circular saws (single- or multi-blade) for working with wood and material with similar physical characteristics or for working with meat and material with similar physical characteristics, of the following types: (a) sawing machinery with fixed blade(s) during cutting, having a fixed bed or support with manual feed of the workpiece or with a demountable power feed; (b) sawing machinery with fixed blade(s) during cutting, having a manually operated reciprocating saw-bench or carriage; (c) sawing machinery with fixed blade(s) during cutting,

having a built-in mechanical feed device for the workpieces, with manual loading and/or unloading; (d) sawing machinery with movable blade(s) during cutting, having mechanical movement of the blade, with manual loading and/or unloading;

- 70 (2) hand-fed surface planing machinery for woodworking;
- 71 (3) thicknessers for one-side dressing having a built-in mechanical feed device, with manual loading and/or unloading for woodworking;
- 72 (4) band-saws with manual loading and/or unloading for working with wood and material with similar physical characteristics or for working with meat and material with similar physical characteristics, of the following types: (a) sawing machinery with fixed blade(s) during cutting, having a fixed or reciprocating-movement bed or support for the workpiece; (b) sawing machinery with blade(s) assembled on a carriage with reciprocating motion;
- 73 (5) combined machinery of the types referred to in heads (1)-(4) above, (7) below, for working with wood and material with similar physical characteristics;
- 74 (6) hand-fed tenoning machinery with several tool holders for woodworking;
- 75 (7) hand-fed vertical spindle moulding machinery for working with wood and material with similar physical characteristics;
- 76 (8) portable chainsaws for woodworking;
- 77 (9) presses, including press-brakes, for the cold working of metals, with manual loading and/or unloading, whose movable working parts may have a travel exceeding 6 mm and a speed exceeding 30 mm/s;
- 78 (10) injection or compression plastics-moulding machinery with manual loading or unloading;
- 79 (11) injection or compression rubber-moulding machinery with manual loading or unloading;
- 80 (12) machinery for underground working of the following types: (a) locomotives and brake-vans; (b) hydraulic-powered roof supports;
- 81 (13) manually loaded trucks for the collection of household refuse incorporating a compression mechanism;
- 82 (14) removable mechanical transmission devices including their guards;
- 83 (15) guards for removable mechanical transmission devices;
- 84 (16) vehicle servicing lifts;
- 85 (17) devices for the lifting of persons or of persons and goods involving a hazard of falling from a vertical height of more than 3 metres;
- 86 (18) portable cartridge-operated fixing and other impact machinery;
- 87 (19) protective devices designed to detect the presence of persons;
- 88 (20) power-operated interlocking movable guards designed to be used as safeguards in machinery referred to in heads (9)-(11) above;
- 89 (21) logic units to ensure safety functions;
- 90 (22) roll-over protective structures (ROPS);
- 91 (23) falling-object protective structures (FOPS).

4 As to the meaning of 'responsible person' see PARA 533 note 1.

5 As to the meaning of 'follow' see PARA 533 note 20.

6 ie the procedure prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8: see PARA 539.

- 7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 10.
- 8 As to the meaning of 'published harmonised standard' see PARA 533 note 16.
- 9 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 11(1), (2).
- 10 Ie the procedure prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8: see PARA 539.
- 11 Ie the procedure prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9: see PARA 540.
- 12 Ie as prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8 point 3: see PARA 539 text to note 15.
- 13 Ie the procedure prescribed in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10: see PARA 541.
- 14 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 12(1), (2).

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### 539. Conformity assessment procedure with internal checks on manufacture.

Where the responsible person<sup>1</sup> is required to follow<sup>2</sup> the conformity assessment procedure<sup>3</sup> with internal checks on the manufacture of machinery<sup>4</sup>, the procedure is as follows<sup>5</sup>. For each representative type of the series in question, the responsible person must draw up a technical file<sup>6</sup>, which comprises:

- 691 (1) a construction file including:
  - 117 186. (a) a general description of the machinery;
  187. (b) the overall drawing of the machinery and drawings of the control circuits, as well as the pertinent descriptions and explanations necessary for understanding the operation of the machinery;
  188. (c) full detailed drawings, accompanied by any calculation notes, test results, certificates, etc, required to check the conformity of the machinery with the essential health and safety requirements<sup>7</sup>;
  189. (d) the documentation on risk assessment demonstrating the procedure followed, including a list of the essential health and safety requirements which apply to the machinery and the description of the protective measures implemented to eliminate identified hazards or to reduce risks and, when appropriate, the indication of the residual risks associated with the machinery;
  190. (e) the standards and other technical specifications used, indicating the essential health and safety requirements covered by these standards;
  191. (f) any technical report giving the results of the tests carried out either by the manufacturer<sup>8</sup> or by a body chosen by the responsible person;
  192. (g) a copy of the instructions for the machinery;
  193. (h) where appropriate, the declaration of incorporation for included partly completed machinery and the relevant assembly instructions for such machinery;
  194. (i) where appropriate, copies of the EC declaration of conformity<sup>9</sup> of machinery or other products incorporated into the machinery;
  195. (j) a copy of the EC declaration of conformity;
  - 118 692 (2) for series manufacture, the internal measures that will be implemented to ensure that the machinery remains in conformity with the provisions of the Machinery Directive<sup>10</sup>.

The manufacturer must carry out necessary research and tests on components, fittings or the completed machinery to determine whether by its design or construction it is capable of being assembled and put into service safely; the relevant reports and results must be included in the technical file<sup>11</sup>. The technical file must be made available to the enforcement authorities<sup>12</sup> and the competent authorities of any other EEA state for at least ten years following the date of manufacture of the machinery or, in the case of series manufacture, of the last unit produced<sup>13</sup>. The technical file does not have to include detailed plans or any other specific information as regards the sub-assemblies used for the manufacture of the machinery unless a knowledge of

them is essential for verification of conformity with the essential health and safety requirements<sup>14</sup>.

The manufacturer must take all measures necessary in order that the manufacturing process ensures compliance of the manufactured machinery with the technical file and with the provisions of the Machinery Directive<sup>15</sup>. Failure to present the technical file in response to a duly reasoned request by the competent national authorities may constitute sufficient grounds for doubting the conformity of the machinery in question with the essential health and safety requirements<sup>16</sup>.

- 1 As to the meaning of 'responsible person' see PARA 533 note 1.
- 2 As to the meaning of 'follow' see PARA 533 note 20.
- 3 As to the meaning of 'conformity assessment procedure' see PARA 533 note 21.
- 4 As to the meaning of 'machinery' see PARA 533 note 3.
- 5 As to the requirement to follow this procedure see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 10, 11(2)(a); and PARA 538. As to the commencement of those regulations see PARA 533 note 2.
- 6 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8 point 2. The technical file is that referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A. The technical file must demonstrate that the machinery complies with the provisions of the Machinery Directive (ie European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery). It must cover the design, manufacture and operation of the machinery to the extent necessary for this assessment. The technical file must be compiled in one or more official Community languages, except for the instructions for the machinery, for which the special provisions of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 1 section 1.7.4.1 apply: Sch 2 Pt 7 pt A. The relevant technical documentation for partly completed machinery is specified in Sch 2 Pt 7 pt B. As to the meaning of 'official Community language' see PARA 533 note 37; and as to the meaning of 'partly completed machinery' see PARA 533 note 3.
- 7 As to the meaning of 'essential health and safety requirements' see PARA 533 note 3. As to those requirements see PARA 534.
- 8 As to the meaning of 'manufacturer' see PARA 533 note 1.
- 9 As to the EC declaration of conformity see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 2 pt 1 section A.
- 10 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A point 1(a), (b).
- 11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A point 1.
- 12 As to the meaning of 'enforcement authority' see PARA 536 note 15.
- 13 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A point 2 first para. The technical file does not have to be located in the territory of an EEA state, nor does it have to be permanently available in material form. However, it must be capable of being assembled and made available within a period of time commensurate with its complexity by the person designated in the EC declaration of conformity: Sch 2 Pt 7 pt A point 2 second para. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.
- 14 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A point 2 third para.
- 15 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 8 point 3.
- 16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 7 pt A point 3.

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#### **540. EC type-examination.**

EC type-examination is the procedure by which a notified body<sup>1</sup> ascertains and certifies that a representative model of specified<sup>2</sup> types of machinery<sup>3</sup> satisfies the provisions of the Machinery Directive<sup>4</sup>. The responsible person<sup>5</sup> must, for each type of machinery ('type'), draw up the technical file<sup>6</sup>. For each type, the application for an EC type-examination must be submitted by the responsible person to a notified body chosen by the responsible person<sup>7</sup>. The applicant must also place at the disposal of the notified body a sample of the type<sup>8</sup>.

The notified body must:

- 693 (1) examine the technical file, check that the type was manufactured in accordance with it and establish which elements have been designed in accordance with the relevant provisions of published harmonised standards<sup>9</sup>, and those elements whose design is not based on the relevant provisions of those standards;
- 694 (2) carry out or have carried out appropriate inspections, measurements and tests to ascertain whether the solutions adopted satisfy the essential health and safety requirements<sup>10</sup>, where published harmonised standards were not applied;
- 695 (3) where published harmonised standards were used, carry out or have carried out appropriate inspections, measurements and tests to verify that those standards were actually applied;
- 696 (4) agree with the applicant as to the place where the check that the type was manufactured in accordance with the examined technical file and the necessary inspections, measurements and tests will be carried out<sup>11</sup>.

If the type satisfies the provisions of the Machinery Directive, the notified body must issue the applicant with an EC type-examination certificate<sup>12</sup>. The manufacturer<sup>13</sup> and the notified body must retain a copy of this certificate, the technical file and all relevant documents for a period of 15 years from the date of issue of the certificate<sup>14</sup>. The applicant must inform the notified body which retains the technical file relating to the EC type-examination certificate of all modifications to the approved type. The notified body must examine these modifications and must then either confirm the validity of the existing EC type-examination certificate or issue a new one if the modifications are liable to compromise conformity with the essential health and safety requirements or the intended working conditions of the type<sup>15</sup>.

If the type does not satisfy the provisions of the Machinery Directive, the notified body must refuse to issue the applicant with an EC type-examination certificate, giving detailed reasons for its refusal. It must inform the applicant, the other notified bodies and the member state which notified it. An appeal procedure must be available<sup>16</sup>.

The European Commission, the member states and the other notified bodies may, on request, obtain a copy of the EC type-examination certificates; and on reasoned request, the Commission and the member states may obtain a copy of the technical file and the results of the examinations carried out by the notified body<sup>17</sup>.

The notified body has the ongoing responsibility of ensuring that the EC type-examination certificate remains valid. It must inform the manufacturer of any major changes which would

have an implication on the validity of the certificate and must withdraw certificates which are no longer valid<sup>18</sup>. The manufacturer of the machinery concerned has the ongoing responsibility of ensuring that the machinery meets the corresponding state of the art<sup>19</sup>.

The manufacturer must request from the notified body the review of the validity of the EC type-examination certificate every five years<sup>20</sup>. If the notified body finds that the certificate remains valid, taking into account the state of the art, it must renew the certificate for a further five years<sup>21</sup>. The manufacturer and the notified body must retain a copy of this certificate, of the technical file and of all the relevant documents for a period of 15 years from the date of issue of the certificate<sup>22</sup>. In the event that the validity of the EC-type examination certificate is not renewed, the manufacturer must cease the placing on the market of the machinery concerned<sup>23</sup>.

1 As to the meaning of 'notified body' see PARA 536 note 4. As to the designation of notified bodies see PARA 535.

2 In which is referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 4: see PARA 538 note 3. As to Sch 2 see PARA 533 note 2.

3 As to the meaning of 'machinery' see PARA 533 note 3.

4 In the European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery: see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 introduction. As to the requirement to follow this procedure see regs 11(2)(b), 12(2)(a); and PARA 538. As to the commencement of the 2008 regulations see PARA 533 note 2. Files and correspondence referring to the EC type-examination procedures must be written in the official language or languages of the EEA state where the notified body is established or in any other official Community language acceptable to the notified body: Sch 2 Pt 9 point 8. As to the meaning of 'official Community language' see PARA 533 note 37. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

5 As to the meaning of 'responsible person' see PARA 533 note 1.

6 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 1. The technical file is that referred to in Sch 2 Pt 7 pt A, as to which see PARA 539.

7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 2 first para. The application must include (1) the name and address of the manufacturer and, where appropriate, the manufacturer's authorised representative; (2) a written declaration that the application has not been submitted to another notified body; (3) the technical file: Sch 2 Pt 9 point 2 second para. As to the meaning of 'authorised representative' see PARA 533 note 1.

8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 2 third para. The notified body may ask for further samples if the test programme so requires: Sch 2 Pt 9 point 2 third para.

9 As to the meaning of 'published harmonised standard' see PARA 533 note 16.

10 As to the meaning of 'essential health and safety requirements' see PARA 533 note 3. As to those requirements see PARA 534.

11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 3.

12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 4 first para. The certificate must include the name and address of the manufacturer and the manufacturer's authorised representative, the data necessary for identifying the approved type, the conclusions of the examination and the conditions to which its issue may be subject: Sch 2 Pt 9 point 4 first para.

13 As to the meaning of 'manufacturer' see PARA 533 note 1.

14 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 4 second para.

15 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 6.

16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 5.

17 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 7.



- 18 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.1.
- 19 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.2.
- 20 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.3 first para.
- 21 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.3 second para.
- 22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.3 third para.
- 23 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 9 point 9.4.

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#### **541. Full quality assurance.**

Where the responsible person<sup>1</sup> is required to follow<sup>2</sup> the conformity assessment procedure<sup>3</sup> for machinery<sup>4</sup> manufactured using a full quality assurance system, the procedure is as follows<sup>5</sup>. The manufacturer<sup>6</sup> must operate an approved quality system for design, manufacture, final inspection and testing, as specified below, and is subject to surveillance<sup>7</sup> under the responsibility of the notified body<sup>8</sup>.

An application for assessment of a quality system must be lodged by the responsible person with a notified body chosen by the responsible person<sup>9</sup>. The quality system must ensure conformity of the machinery with the provisions of the Machinery Directive<sup>10</sup>. All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner, in the form of measures, procedures and written instructions, and the documentation on the quality system must permit a uniform interpretation of the procedural and quality measures, such as quality programmes, plans, manuals and records<sup>11</sup>. The notified body must assess the quality system to determine whether it satisfies the above requirements<sup>12</sup>. The team of auditors must have at least one member who is experienced in the assessment of the technology of the machinery<sup>13</sup>. The assessment procedure must include an inspection to be carried out at the manufacturer's premises, and during the assessment, the team of auditors must carry out a review of the technical files<sup>14</sup>, to ensure their compliance with the applicable health and safety requirements<sup>15</sup>.

The responsible person must be notified of the decision; the notification must contain the conclusions of the examination and the reasoned assessment decision<sup>16</sup>. An appeal procedure must be available<sup>17</sup>.

The manufacturer must undertake to fulfil the obligations arising from the quality system as approved and to ensure that it remains appropriate and effective<sup>18</sup>. The responsible person must inform the notified body which approved the quality system of any planned change to it<sup>19</sup>. The notified body must evaluate the proposed changes and decide whether the modified quality assurance system will continue to satisfy the prescribed requirements, or whether a re-assessment is necessary<sup>20</sup>. It must notify the manufacturer of its decision; the notification must contain the conclusions of the examination and the reasoned assessment decision<sup>21</sup>.

The manufacturer must, for inspection purposes, allow the notified body access to the places of design, manufacture, inspection, testing and storage, and must provide it with all necessary information<sup>22</sup>. The notified body must conduct periodic audits to make sure that the manufacturer is maintaining and applying the quality system and it must provide the manufacturer with an audit report; the frequency of the periodic audits must be such that a full reassessment is carried out every three years<sup>23</sup>. The notified body may also pay the manufacturer unannounced visits; on the occasion of such visits, the notified body may, if necessary, carry out tests or have them carried out in order to check the proper functioning of the quality system<sup>24</sup>. It must provide the manufacturer with a visit report and, if a test was carried out, with a test report<sup>25</sup>.

The responsible person must keep available for the national authorities, for a period of ten years from the last date of manufacture, (1) the documentation on the quality system<sup>26</sup>; (2) the decisions and reports<sup>27</sup> of the notified body<sup>28</sup>.

- 1 As to the meaning of 'responsible person' see PARA 533 note 1.
- 2 As to the meaning of 'follow' see PARA 533 note 20.
- 3 As to the meaning of 'conformity assessment procedure' see PARA 533 note 21.
- 4 As to the meaning of 'machinery' see PARA 533 note 3.
- 5 As to the requirement to follow this procedure see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 11(2)(c), 12(2)(b); and PARA 538. As to the commencement of those regulations see PARA 533 note 2.
- 6 As to the meaning of 'manufacturer' see PARA 533 note 1.
- 7 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 3: see the text and notes 22-25. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system: Sch 2 Pt 10 point 3.1.
- 8 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 1. As to the meaning of 'notified body' see PARA 536 note 4. As to the designation of notified bodies see PARA 535.
- 9 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.1 first para. The application must contain (1) the name and address of the manufacturer and, where appropriate, the manufacturer's authorised representative; (2) the places of design, manufacture, inspection, testing and storage of the machinery; (3) the technical file described in Sch 2 Pt 7 pt A (see PARA 539), for one model of each category of machinery referred to in Sch 2 Pt 4 (see PARA 538 note 3) which the manufacturer intends to manufacture; (4) the documentation on the quality system; (5) a written declaration that the application has not been submitted to another notified body: Sch 2 Pt 10 point 2.1 second para. As to the meaning of 'authorised representative' see PARA 533 note 1.
- 10 Ie European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.2 first para.
- 11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.2 first para. It must contain, in particular, an adequate description of (1) the quality objectives, the organisational structure, and the responsibilities and powers of the management with regard to the design and quality of the machinery; (2) the technical design specifications, including standards that will be applied and, where published harmonised standards are not applied in full, the means that will be used to ensure that the essential health and safety requirements are fulfilled; (3) the design inspection and design verification techniques, processes and systematic actions that will be used when designing machinery covered by the Machinery Directive; (4) the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used; (5) the inspections and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out; (6) the quality records, such as inspection reports and test data, calibration data, and reports on the qualifications of the personnel concerned; (7) the means of monitoring the achievement of the required design and quality of the machinery, as well as the effective operation of the quality system: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.2 second para.
- 12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3 first para. The elements of the quality system which conform to the relevant harmonised standard are presumed to conform to the corresponding requirements referred to in Sch 2 Pt 10 point 2.2: Sch 2 Pt 10 point 2.3 second para. As to the meaning of 'harmonised standard' see PARA 533 note 16.
- 13 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3 third para.
- 14 Ie the technical files referred to in note 9 head (3).
- 15 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3 third para. As to the meaning of 'essential health and safety requirements' see PARA 533 note 3. As to those requirements see PARA 534.
- 16 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3 fourth para.
- 17 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.3 fourth para.
- 18 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.4 first para.

- 19 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.4 second para.
- 20 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.4 third para.
- 21 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.4 fourth para.
- 22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 3.2. Such information includes (1) the documentation concerning the quality system; (2) the quality records provided for in that part of the quality system concerned with design, such as the results of analyses, calculations, tests, etc; (3) the quality records provided for in that part of the quality system concerned with manufacture, such as inspection reports and test data, calibration data, reports on the qualifications of the personnel concerned, etc: Sch 2 Pt 10 point 3.2.
- 23 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 3.3.
- 24 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 3.4 first para. The need for these additional visits and their frequency will be determined on the basis of a visit monitoring system managed by the notified body. In particular, the following factors will be taken into account in the visits monitoring system: (1) the results of previous surveillance visits; (2) the need to monitor remedial measures; (3) where appropriate, special conditions attaching to approval of the system; (4) significant modifications in the organisation of the manufacturing process, measures or techniques: Sch 2 Pt 10 point 3.4 first para.
- 25 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 3.4 second para.
- 26 Ie the documentation referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.1: see note 9.
- 27 Ie the decisions and reports referred to in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 2.4 third and fourth paras (see the text to notes 20-21), and in Sch 2 Pt 10 points 3.3 and 3.4 (see the text and notes 23-25).
- 28 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 2 Pt 10 point 4.

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### **(iii) Enforcement**

#### **542. Enforcement in general.**

With one exception<sup>1</sup>, it is the duty of the Health and Safety Executive<sup>2</sup> to make adequate arrangements for the enforcement of the Supply of Machinery (Safety) Regulations 2008<sup>3</sup> in Great Britain<sup>4</sup> in relation to machinery<sup>5</sup> and partly completed machinery<sup>6</sup> for use at work<sup>7</sup>.

It is, however, the duty of the Office of Rail Regulation<sup>8</sup> to make adequate arrangements for the enforcement of the Supply of Machinery (Safety) Regulations 2008 in Great Britain where the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006<sup>9</sup> make it the enforcing authority<sup>10</sup>, in relation to machinery or partly completed machinery for use in the operation of a railway, tramway or any other system of guided transport, as defined in the 2006 regulations<sup>11</sup>. The Secretary of State may enforce the 2008 regulations in relation to machinery or partly completed machinery which is not for use at work in cases where the Office of Rail Regulation is not the enforcement authority<sup>12</sup>.

In relation to the enforcement of the 2008 regulations by the Health and Safety Executive or the Office of Rail Regulation, provisions of the Health and Safety at Work etc Act 1974 are applied with modifications<sup>13</sup>, and in relation to enforcement by local weights and measures authorities or the Secretary of State, provisions of the Consumer Protection Act 1987 are applied with modifications<sup>14</sup>. In relation to proceedings for an offence in relation to machinery or partly completed machinery which is not for use at work, further modifications are made to the Health and Safety at Work etc Act 1974<sup>15</sup>.

Contravention of or failure to comply with certain requirements of the 2008 regulations is an offence<sup>16</sup>.

Where an enforcement authority has reasonable grounds for suspecting that a product is deficient as regards CE marking<sup>17</sup>, but does not have reasonable grounds for suspecting that it is not safe, the enforcement authority may take action under specified statutory provisions<sup>18</sup>; but no other enforcement action may be taken and no proceedings for an offence may be brought<sup>19</sup> in respect of that product until the enforcement authority has served on the responsible person<sup>20</sup> a notice in writing<sup>21</sup> and the responsible person has failed to comply with its requirements<sup>22</sup>.

Where an enforcement authority has reasonable grounds for considering that a product is deficient as regards CE marking, it may serve a notice on the responsible person which (1) identifies the product concerned; (2) states that the enforcement authority considers that it is deficient as regards CE marking and the reasons why the authority considers that this is the case; (3) requires the responsible person to take (or refrain from taking) specified action within a specified period to bring the deficiency to an end; and (4) warns the responsible person that if the deficiency continues beyond the period specified in the notice, further action may be taken under the 2008 regulations<sup>23</sup>.

A defence of due diligence is provided in relation to proceedings for an offence under the Supply of Machinery (Safety) Regulations 2008<sup>24</sup>, and provision is made as to the liability of persons other than the principal offender<sup>25</sup>.

Any enforcement authority (other than the Secretary of State) which takes action (whether under the 2008 regulations or otherwise) to prohibit or restrict the placing on the market or putting into service of any machinery or partly completed machinery which bears the CE marking must immediately inform the Secretary of State of the action taken, and the reasons for it, with a view to that information being passed by the Secretary of State to the European Commission<sup>26</sup>.

1 See the text to notes 8-11.

2 As to the Health and Safety Executive see PARA 361 et seq.

3 I.e. the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597: see PARA 533 et seq. As to the commencement of those regulations see PARA 533 note 2.

4 As to the meaning of 'Great Britain' see PARA 305 note 7.

5 As to the meaning of 'machinery' see PARA 533 note 3.

6 As to the meaning of 'partly completed machinery' see PARA 533 note 3.

7 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 1. As to the meaning of 'use at work' see PARA 536 note 15. It is the duty of every local weights and measures authority in Great Britain to enforce those regulations within its area in relation to machinery or partly completed machinery which is not for use at work: Sch 5 para 2. As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

8 As to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 49 et seq.

9 I.e. the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557.

10 I.e. within the meaning of the Health and Safety at Work etc Act 1974 s 18(7): see PARA 368.

11 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 3.

12 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 6. As to the meaning of 'enforcement authority' see PARA 536 note 15.

13 I.e. the Health and Safety at Work etc Act 1974 ss 19-28, 33-35, 38, 39, 41, 42 apply as provided in the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 8; and the Health and Safety at Work etc Act 1974 ss 36(1), (2), 37 apply in relation to offences under s 33 as applied in relation to the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, and modified by Sch 5 para 8: see Sch 5 para 7. Thus (Sch 5 para 8), for the purposes of the enforcement of the 2008 regulations by the Health and Safety Executive or the Office of Rail Regulation, and in respect of any related proceedings for contravention of those regulations, the provisions specified in above apply as if:

92 (1) references to relevant statutory provisions (as to which see PARA 302 note 24) were references to those provisions as modified by the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 8 and to those regulations;

93 (2) references to articles, substances, articles and substances, or plant, were references to machinery or partly completed machinery, or a machine or partly completed machine, as the context may require;

94 (3) references to an 'enforcing authority' were references to the Health and Safety Executive or the Office of Rail Regulation, as appropriate;

95 (4) references to the field of responsibility of an enforcing authority, however expressed, were omitted;

96 (5) in the Health and Safety at Work etc Act 1974 s 20, sub-s (3) were omitted;

97 (6) the Health and Safety at Work etc Act 1974 s 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in s 22(2), permitted an inspector to serve a prohibition notice in any case where (a) a responsible person has failed to comply with

the requirements of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, in relation to CE marking; and (b) the responsible person has been served with a notice under reg 21(3), or an improvement notice under the Health and Safety at Work etc Act 1974 s 21 (see PARA 377), in respect of that failure and has continued to fail to comply with those requirements after the period for remedying the contravention specified in the improvement notice;

98 (7) in s 23, sub-ss (3), (4), (6) were omitted;

99 (8) in s 33, (a) in sub-s (1) the whole of paras (a)-(d) were omitted; (b) sub-s (1A) were omitted; (c) in sub-s (2), the reference to sub-s (1)(d) were omitted; (d) sub-s (2A) were omitted; (e) for sub-s (3) there were substituted the following: '(3) A person guilty of an offence under any paragraph of subsection (1) not mentioned in subsection (2), or of an offence under subsection (1)(e) not falling within subsection (2), shall be liable: (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or (b) on conviction on indictment: (i) in the case of an offence under subsection (1)(g) or of an offence under subsection (1)(j), to imprisonment for a term not exceeding two years, or a fine, or both; or (ii) in all other cases, to a fine.'; and (f) sub-s (4) were omitted;

100 (9) in s 34, (a) sub-s (1)(a), (b) were omitted; and (b) in sub-s (3) for 'six months' there were substituted '12 months'; and

101 (10) in s 42, sub-ss (4), (5) were omitted.

14 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 paras 11-12.

15 Ie to the Health and Safety at Work etc Act 1974 s 34 (see PARA 855), which applies as if (1) s 34(1)(a), (b) were omitted; (2) references to an 'enforcing authority' were references to local weights and measures authorities and the Secretary of State, and 'responsible enforcing authority' were construed accordingly; (3) references to 'relevant statutory provisions' were references to the 2008 regulations; and (4) in the Health and Safety at Work etc Act 1974 s 34(3), for 'six months' there were substituted '12 months': see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 13.

16 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22. A person who contravenes or fails to comply with (1) a requirement of reg 7, 8, 9, 10, 11, 12 or 15; or (2) a requirement under reg 21(3)(c) of a notice served under reg 21(3), is guilty of an offence: reg 22(1). As to offences and penalties see PARA 881.

17 For these purposes, a product is deficient as regards CE marking (1) if it is not subject to the Machinery Directive (European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) on machinery), but the CE marking is affixed to it pursuant to the Directive; or (2) if it is machinery and (a) the CE marking is not affixed to it; (b) it is not accompanied by a copy of the EC declaration of conformity; or (c) the CE marking is affixed to it but it does not conform to the relevant provisions of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597; or (d) a marking other than the CE marking, which is prohibited by reg 15(2) or (3), is affixed to it: reg 21(1). As to meaning of 'CE marking' see PARA 533 note 4. As to the EC declaration of conformity see PARA 539 note 9.

18 Ie under (1) in the case of the Health and Safety Executive or the Office of Rail Regulation, the Health and Safety at Work etc Act 1974 s 20; (2) in the case of any other enforcement authority, the Consumer Protection Act 1987 s 29, as those sections are applied by the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5.

19 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22.

20 As to the meaning of 'responsible person' see PARA 533 note 1.

21 Ie in accordance with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 21(3): see the text to note 23.

22 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 21(2).

23 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 21(3). In any proceedings under reg 22 in respect of a person's alleged failure to comply with a notice under reg 21(3), an enforcement authority must show that the product concerned was deficient as regards CE marking at the time when the notice was served: reg 21(4).

24 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 23; and PARA 881.

25 See the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 24; and PARA 881.

26 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 16.

Nothing in the 2008 regulations prevents an enforcement authority from taking any action (whether by way of investigation, prosecution or otherwise) which it is permitted to take in relation to machinery or partly completed machinery under or by virtue of the Health and Safety at Work etc Act 1974 or the Consumer Protection Act 1987: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 17(1). To the extent that an enforcement authority takes action in relation to machinery or partly completed machinery under or by virtue of the Health and Safety at Work etc Act 1974 or the Consumer Protection Act 1987, and not under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, any modification made to those Acts by those regulations is to be disregarded: Sch 5 para 17(2). See also *R (on the application of Junttan Oy) v Bristol Magistrates' Court* [2003] UKHL 55, [2004] 2 All ER 555, [2003] ICR 1475; and PARA 881.



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### 543. Forfeiture orders.

An enforcement authority<sup>1</sup> in England and Wales may apply for an order for the forfeiture of any machinery<sup>2</sup> or partly completed machinery<sup>3</sup> on the grounds that there has been a contravention of the regulations imposing the general obligations and prohibition under the Supply of Machinery (Safety) Regulations 2008<sup>4</sup> in relation to it<sup>5</sup>. An application for such an order may be made to a magistrates' court (1) where proceedings have been brought in that court in respect of an offence<sup>6</sup> in relation to some or all of the machinery or partly completed machinery; (2) where an application with respect to some or all of the machinery or partly completed machinery has been made to that court<sup>7</sup>; and (3) by way of complaint, where no application for the forfeiture of the machinery or partly completed machinery has been made under head (1) or (2) above<sup>8</sup>. On an application the court must make an order for the forfeiture of the machinery or partly completed machinery only if satisfied that there has been a contravention of the relevant regulation<sup>9</sup> in relation to it<sup>10</sup>.

Any person aggrieved by an order made under these provisions by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision to the Crown Court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal<sup>11</sup>.

Where any machinery or partly completed machinery is forfeited under these provisions it must be destroyed in accordance with such directions as the court may give<sup>12</sup>. However, on making an order, a magistrates' court may, if it considers it appropriate to do so, direct that the machinery or partly completed machinery to which the order relates is (instead of being destroyed) to be released, to such person as the court may specify, on condition that that person (a) does not supply the machinery or partly completed machinery to any person otherwise than (i) to a person who carries on a business of buying machinery or partly completed machinery of the same description as that machinery or partly completed machinery and repairing or reconditioning it; or (ii) as scrap (that is to say, for the value of materials included in the machinery or partly completed machinery rather than for the value of the machinery or partly completed machinery itself); and (b) complies with any order to pay costs or expenses<sup>13</sup> which has been made against that person in the proceedings for the order for forfeiture<sup>14</sup>.

1 As to the meaning of 'enforcement authority' see PARA 536 note 15.

2 As to the meaning of 'machinery' see PARA 533 note 3.

3 As to the meaning of 'partly completed machinery' see PARA 533 note 3.

4 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7 or 8: see PARA 533. As to the commencement of those regulations see PARA 533 note 2.

5 Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(1).

6 Ie under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22: see PARA 881.

7     le under the Consumer Protection Act 1987 s 15 or 33 as applied for the purposes of the enforcement of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, by Sch 5 para 11: see PARA 542 text to note 14.

8     Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 14(2).

9     le the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7 or reg 8.

10    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(3). A court may infer for these purposes that there has been a contravention of reg 7 or 8 in relation to any machinery or partly completed machinery if satisfied that either of those regulations has been contravened in relation to a machine or partly completed machine which is representative of that machinery or partly completed machinery (whether by reason of its being of the same design or part of the same consignment or batch or otherwise): Sch 5 para 14(4). As to the meaning of 'machine' see PARA 533 note 13. 'Partly completed machine' means an item of partly completed machinery: reg 2(2).

11    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(5). For these purposes, an appeal includes any application under the Magistrates' Courts Act 1980 s 111 (statement of case): Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(5).

12    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(6).

13    le including any order under the Consumer Protection Act 1987 s 35 as applied for the purposes of the enforcement of the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, by Sch 5 para 11: see PARA 542 text to note 14.

14    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 20, Sch 5 para 14(7).

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### **(3) SUPPLY ETC OF PRESSURE SYSTEMS, VESSELS AND EQUIPMENT**

#### **(i) Pressure Systems**

##### **544. Application of the Pressure Systems Safety Regulations 2000.**

Pressure systems are subject to the Pressure Systems Safety Regulations 2000<sup>1</sup> which came into force on 21 February 2000<sup>2</sup>. For the purposes of the 2000 regulations, 'pressure system' means:

- 697 (1) a system comprising one or more pressure vessels of rigid construction, any associated pipework<sup>3</sup> and protective devices<sup>4</sup>;
- 698 (2) the pipework with its protective devices to which a pressure receptacle, an old pressure receptacle or transportable pressure equipment<sup>5</sup> is, or is intended to be, connected; or
- 699 (3) a pipeline<sup>6</sup> and its protective devices,

which contains or is liable to contain a relevant fluid<sup>7</sup>, but does not include a pressure receptacle, an old pressure receptacle or transportable pressure equipment<sup>8</sup>.

The 2000 regulations apply both in and, in prescribed circumstances, outside<sup>9</sup> Great Britain<sup>10</sup>. Subject to certain exceptions<sup>11</sup>, they apply to or in relation to pressure systems which are used or intended to be used at work<sup>12</sup>.

Any requirement or prohibition imposed by the 2000 regulations:

- 700 (a) on an employer in respect of the activities of his employees<sup>13</sup> also extends to a self-employed person<sup>14</sup> in respect of his own activities at work<sup>15</sup>;
- 701 (b) on a person:
- 119 196. (i) who designs, manufactures, imports or supplies any pressure system, or any article which is intended to be a component part of any pressure system, extends only to such a system or article designed, manufactured, imported or supplied in the course of a trade, business or other undertaking carried on by him, whether for profit or not;
- 197. (ii) who designs or manufactures such a system or article extends only to matters within his control<sup>16</sup>.

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Duties under the 2000 regulations are modified in cases where pressure systems are supplied by way of lease, hire or other arrangements<sup>17</sup>.

The Health and Safety Executive<sup>18</sup> may, by a certificate in writing<sup>19</sup>, exempt any person or class of persons or any type or class of pressure system from the application of any of the requirements or prohibitions imposed by the 2000 regulations, and any such exemption may be granted subject to conditions and to a limit of time, and may be revoked by a certificate in

writing at any time<sup>20</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances, and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirement imposed by or under any enactment which applies to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>21</sup>.

1     le the Pressure Systems Safety Regulations 2000, SI 2000/128: see the text and notes 2-21; and PARA 545 et seq.

2     Pressure Systems Safety Regulations 2000, SI 2000/128, reg 1. For transitional provisions see reg 19.

3     For these purposes, 'pipework' means a pipe or system of pipes together with associated valves, pumps, compressors and other pressure containing components and includes a hose or bellows but does not include a pipeline or any protective devices: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1). As to the meanings of 'pipeline' and 'protective devices' see notes 6, 4 respectively.

4     For these purposes, 'protective devices' means devices designed to protect the pressure system against system failure and devices designed to give warning that system failure might occur, and include bursting discs: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1).

5     For these purposes, 'old pressure receptacle' has the meaning in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1), which is to apply as if the receptacle were being carried by road; 'pressure receptacle' has the meaning in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2(1), except that it includes any permanent fitting to a pressure receptacle, and reg 2(1) applies as if the receptacle were being carried by road; and 'transportable pressure equipment' has the same meaning as in reg 2(1) of those regulations, except that it excludes a tank within the meaning of those regulations: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1) (definitions added and substituted by SI 2004/568; and amended by SI 2007/1573). Note that the 2007 regulations have been revoked and replaced by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348. For the purposes of those regulations, 'old pressure receptacle' is defined in reg 14(6); 'transportable pressure equipment' has the meaning applied by reg 2(4) (see PARA 555 note 1); and 'pressure receptacle' and 'tank' have the meanings applied by reg 2(3) (see PARA 555 note 1). As to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, generally see PARAS 555-557; and **CARRIAGE AND CARRIERS**.

6     For these purposes, 'pipeline' means a pipe or system of pipes used for the conveyance of relevant fluid across the boundaries of premises, together with any apparatus for inducing or facilitating the flow of relevant fluid through, or through a part of, the pipe or system, and any valves, valve chambers, pumps, compressors and similar works which are annexed to, or incorporated in the course of, the pipe or system: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1). As to the meaning of 'relevant fluid' see note 7.

7     For these purposes, 'relevant fluid' means (1) steam; (2) any fluid or mixture of fluids which is at a pressure greater than 0.5 bar above atmospheric pressure, and which fluid or mixture of fluids is (a) a gas; or (b) a liquid which would have a vapour pressure greater than 0.5 bar above atmospheric pressure when in equilibrium with its vapour at either the actual temperature of the liquid or 17.5 degrees Celsius; or (3) a gas dissolved under pressure in a solvent contained in a porous substance at ambient temperature and which could be released from the solvent without the application of heat: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1).

8     Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1) (definition amended by SI 2004/568).

9     The Pressure Systems Safety Regulations 2000, SI 2000/128, apply outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 7, 8(a), save in relation to anything to which arts 4-6 apply (see PARA 305): Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(1)(b); Interpretation Act 1978 s 17(2).

As to offences under the 2000 regulations see PARA 859 head (1).

10    Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(1).

11    le subject to the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(2), Sch 1. Schedule 1 Pt I (amended by SI 2004/568; SI 2005/2092; and SI 2007/1573) provides that the 2000 regulations do not apply to:

- 102   (1)   a pressure system which forms part of the equipment of (a) a vessel used in navigation; (b) a spacecraft, aircraft, hovercraft or hydrofoil;

- 103 (2) a pressure system which forms part of, or is intended to form part of, a weapons system;
- 104 (3) a pressure system which forms part of any braking, control or suspension system of a wheeled, tracked or rail mounted vehicle;
- 105 (4) that part of a system which is only a pressure system because it is: (a) subject to a leak test (except that this does not apply to a pipeline); (b) pressurised unintentionally, such pressurisation being not reasonably foreseeable; or (c) a pipeline pressurised by a relevant fluid solely as part of a test or line clearance operation, but this exception does not apply if the pipeline is used for the conveyance of a relevant fluid, or is pressurised beyond its safe operating limits;
- 106 (5) any pipeline and its protective devices in which the pressure does not exceed 2 bar above atmospheric pressure (or 2.7 bar above atmospheric pressure if the normal pressure does not exceed 2 bar and the overpressure is caused solely by the operation of a protective device);
- 107 (6) any pressure system or part thereof which (a) is the subject of a research experiment; or (b) comprises temporary apparatus being used in a research experiment, if, in the case of regs 4, 5, 6, 7, 11, 13 and 14, it is not reasonably practicable to comply with them;
- 108 (7) any plant or equipment required by the Diving at Work Regulations 1997, SI 1997/2776, reg 6(3)(b) (see PARA 592) and used or intended to be used in the course of a diving project to which those regulations apply;
- 109 (8) a working chamber, tunnel, manlock or an airlock within which persons work in compressed air, being work to which the Work in Compressed Air Regulations 1996, SI 1996/1656 (see PARA 699 et seq), apply;
- 110 (9) a tank or an old tank within the meaning of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348) (see **CARRIAGE AND CARRIERS**);
- 111 (10) any pressure system being carried in a vehicle if the vehicle is engaged in an international transport operation within the meaning of the Convention concerning International Carriage by Rail as revised or reissued from time to time ('COTIF') and such carriage conforms in every respect to the provisions of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail ('CIM'), which form Appendix B to that Convention, and the Regulation concerning the International Carriage of Dangerous Goods by Rail including its Annex ('RID'), which together form Appendix C to that Convention (see further **CARRIAGE AND CARRIERS**);
- 112 (11) any pressure system being carried in a vehicle if the vehicle is registered outside the United Kingdom and the carriage is confined to Great Britain but nevertheless conforms with the provisions of the European Agreement concerning the international carriage of dangerous goods by road signed in Geneva on 30 September 1957 as revised or reissued from time to time (the 'ADR') (see further **CARRIAGE AND CARRIERS**);
- 113 (12) any pressure system being carried in a vehicle if the vehicle (a) is engaged in an international transport operation within the meaning of the ADR; (b) complies with the conditions contained in Annexes A and B to the ADR; and (c) is certified pursuant to the ADR as complying with it; or if the vehicle is engaged in a transport operation subject to a special bilateral or multilateral agreement to which art 4 of the ADR refers and to which the United Kingdom is a contracting party;
- 114 (13) any pressure system being carried in a vehicle if the vehicle is engaged in an international transport operation within the meaning of ADR art 1(c) and under the control of or owned by the armed forces within the meaning of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348), where the armed forces are those of a country which is a contracting party to ADR;
- 115 (14) any pressure system which is carried, or stored as goods in transit, as part of an international transport operation, if it complies with the appropriate provisions of the International Maritime Dangerous Goods Code issued by the International Maritime Organisation as revised or reissued from time to time;

- 116 (15) any pressure system comprising a gas propulsion or a gas fired heating, cooking, ventilating or refrigerating system fitted to a motor vehicle or trailer (both within the meaning of the Road Traffic Act 1988 s 185(1): see **ROAD TRAFFIC**);
- 117 (16) any water cooling system on an internal combustion engine or on a compressor;
- 118 (17) any tyre used or intended to be used on a vehicle;
- 119 (18) any vapour compression refrigeration system incorporating compressor drive motors, including standby compressor motors, having a total installed power not exceeding 25 kW;
- 120 (19) a mobile system of the type known as a slurry tanker, and containing or intended to contain agricultural slurry, and used in agriculture;
- 121 (20) prime movers including turbines;
- 122 (21) any pressure system which is an electrical or telecommunications cable;
- 123 (22) any pressure system containing sulphur hexafluoride gas and forming an integral part of high voltage electrical apparatus;
- 124 (23) any pressure system consisting of a water filled fluid coupling and used in power transmission;
- 125 (24) any portable fire extinguisher with a working pressure below 25 bar at 60 degrees C and having a total mass not exceeding 23 kgs;
- 126 (25) any part of a tool or appliance designed to be held in the hand which is a pressure vessel.

Additionally, the Pressure Systems Safety Regulations 2000, SI 2000/128, Sch 1 Pt II provides that (i) regs 4, 5(1), (4) do not apply to (A) pressure systems to which the Medical Devices Regulations 2002, SI 2002/618, apply (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 621-622) other than those which contain or are liable to contain steam; or (B) pressure equipment or assemblies within the meaning of the Pressure Equipment Regulations 1999, SI 1999/2001, to which reg 7(1), reg 8(1), reg 9(1) or reg 10 of those regulations apply (see PARA 559); (ii) the Pressure Systems Safety Regulations 2000, SI 2000/128, regs 5(4), 8-10, 14 (see PARAS 546-549) do not apply to a pressure system containing a relevant fluid (other than steam) if the product of the pressure in bar and internal volume in litres of its pressure vessels is in each case less than 250 bar litres (subject to transitional provisions); (iii) regs 4, 5, 7-10, 13-14 do not apply to a tank container if (A) it is intended to be used in the carriage of dangerous goods by road to which the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, apply, or would apply but for an exception specified in reg 35 and is present solely for the purpose of being loaded with the goods to be carried; or (B) it has been used in such carriage, has been temporarily removed from a vehicle and is present solely for the purpose of unloading the goods from it: see the Pressure Systems Safety Regulations 2000, SI 2000/128, Sch 1 Pt II (paras 1-3) (amended by SI 2004/568 and SI 2007/1573). Note that the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, have been revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which do not contain an equivalent exception.

12 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(2).

13 As to the meaning of 'employee' see PARA 302 note 4.

14 As to the meaning of 'self-employed person' see PARA 302 note 5.

15 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(3).

16 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(4).

17 See the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 3(5), Sch 2. Where a person supplies an installed system by way of lease or hire, and agrees in writing to be responsible for discharging the duties of the user under all the provisions of regs 8(1), (2), 9(1), 11(1), 12, 14 (see PARA 547 et seq), then during such time as the agreement is in force the supplier must discharge the duties of the user under those provisions: Sch 2 para 1(a), (b). It is a defence in any proceedings against the user of an installed system for an offence for a contravention of any of those provisions, or in any civil proceedings for breach of duty (mentioned in the Health and Safety at Work etc Act 197 s 47(2): see PARA 416) imposed by any such provisions, for that person to prove that the supplier had agreed in writing to be responsible for discharging the user's duty at the relevant time: Pressure Systems Safety Regulations 2000, SI 2000/128, Sch 2 para 1(d). During such time as the agreement is in force the following provisions have effect: (1) where the competent person who is to carry out the examination under the scheme of examination is a person other than the supplier, the supplier must

notify the competent person that any reports required to be sent or given to the user under reg 9(3) or 10(1) are to be sent or given to the supplier as well; (2) on being so notified under head (1) above, the competent person must comply with regs 9(3) and 10(1) as if the reference therein to sending or giving a report to the user also included a reference to sending or giving a report to the supplier; (3) on receipt of a report from a competent person under reg 9(3) or 10(1) (or in the case where the supplier is also the competent person, on the making by him of that report) the supplier must take all practicable steps to ensure that the pressure system will not be operated in contravention of reg 9(6) or 10(2), as the case may be; (4) the references in reg 9(7) (in both places where it appears) and 9(8) to the user are to be read as references to the supplier; (5) the reference in reg 14(2)(a) to the premises where the system is installed is to be read as a reference to the premises in Great Britain where the leasing or hiring out of the system is controlled; except that this modification does not apply to the application of reg 14(2)(a) to reg 14(6)(a) where the competent person is using the procedure referred to in reg 14(4) in relation to the sending of the report to the user: Sch 2 para 1(e)-(i).

Where a person supplies a pressure system to another (the 'customer') under a hire-purchase agreement, conditional sale agreement, or lease, and (a) he carries on the business of financing the acquisition of goods by others by means of such agreements, or, if financing by means of leases, the use of goods by others; (b) in the course of that business he acquired his interest in the pressure system supplied to the customer as a means of financing its acquisition by that customer (or, in the case of a lease, its provision to that customer); and (c) in the case of a lease he or his agent either has not had physical possession of that pressure system, or has had physical possession of it only for the purpose of passing it on to the customer, the customer and not the person who provided the finance is to be treated for the purpose of the 2000 regulations as being the owner of the pressure system, and duties placed on owners in those regulations accordingly fall on the customer and not on the person providing the finance: Sch 2 para 2. The Health and Safety at Work etc Act 1974 s 6(9) (see PARA 531) and the Health and Safety (Leasing Arrangements) Regulations 1992, SI 1992/1524 (see PARA 532) apply to the 2000 regulations as they apply to the remainder of the Health and Safety at Work etc Act 1974 s 6: Pressure Systems Safety Regulations 2000, SI 2000/128, Sch 2 para 3.

18 As to the Health and Safety Executive see PARA 361 et seq.

19 Any reference in the Pressure Systems Safety Regulations 2000, SI 2000/128, to anything being in writing or written (including any reference to anything being kept in writing) includes reference to its being in a form (1) in which it is capable of being reproduced as a written copy when required; (2) which is secure from loss or unauthorised interference: reg 2(2).

20 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 17(1).

21 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 17(2).

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#### 545. Design and construction.

Any person who designs, manufactures, imports or supplies any pressure system<sup>1</sup> or any article which is intended to be a component part of any pressure system must ensure that the following provisions are complied with<sup>2</sup>:

- 702 (1) the pressure system or article, as the case may be, must be properly designed and properly constructed from suitable material, so as to prevent danger<sup>3</sup>;
- 703 (2) the pressure system or article, as the case may be, must be so designed and constructed that all necessary examinations<sup>4</sup> for preventing danger can be carried out<sup>5</sup>;
- 704 (3) where the pressure system has any means of access to its interior, it must be so designed and constructed as to ensure, so far as practicable<sup>6</sup>, that access can be gained without danger<sup>7</sup>;
- 705 (4) the pressure system must be provided with such protective devices<sup>8</sup> as may be necessary for preventing danger; and any such device designed to release contents must do so safely, so far as is practicable<sup>9</sup>.

1 As to the meaning of 'pressure system' see PARA 544.

2 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 4(1). As to the application of the 2000 regulations see PARA 544.

3 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 4(2). 'Danger' in relation to a pressure system means reasonably foreseeable danger to persons from system failure, but (except in the case of steam) it does not mean danger from the hazardous characteristics of the relevant fluid other than from its pressure; and 'system failure' means the unintentional release of stored energy (other than from a pressure relief system) from a pressure system: reg 2(1). As to the meaning of 'relevant fluid' see PARA 544 note 7.

4 'Examination' means a careful and critical scrutiny of a pressure system or part of a pressure system, in or out of service as appropriate, using suitable techniques, including testing where appropriate, to assess (1) its actual condition; and (2) whether, for the period up to the next examination, it will not cause danger when properly used if normal maintenance is carried out, and for this purpose 'normal maintenance' means such maintenance as it is reasonable to expect the user (in the case of an installed system) or owner (in the case of a mobile system) to ensure is carried out independently of any advice from the competent person making the examination: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1). 'User' in relation to a pressure system, or a vessel to which reg 15 (see PARA 550) applies, means the employer or self-employed person who has control of the operation of the pressure system or such a vessel or, in the case of a pressure system or such a vessel at or in (a) a mine within the meaning of the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1) it means the manager for the time being of that mine; (b) a quarry within the meaning of the Quarries Regulations 1999, SI 1999/2024, reg 3 (see PARA 838), it means the operator for the time being of that quarry; and 'owner' in relation to a pressure system means the employer or self-employed person who owns the pressure system or, if he does not have a place of business in Great Britain, his agent in Great Britain or, if there is no such agent, the user: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1). 'Installed system' means a pressure system other than a mobile system; and 'mobile system' means a pressure system which can be readily moved between and used in different locations but it does not include a pressure system of a locomotive: reg 2(1). 'Competent person' means a competent individual person (other than an employee) or a competent body of persons corporate or unincorporate; and accordingly any reference for these purposes to a competent person performing a function includes a reference to his performing it through his employees: reg 2(1). As to the meanings of 'employee' and 'self-employed person' see PARA 302 notes 4-5; and as to the meaning of 'Great Britain' see PARA 305 note 7.

5 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 4(3).



- 6 As to the meaning of 'so far as is practicable' see PARA 417.
- 7 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 4(4).
- 8 As to the meaning of 'protective devices' see PARA 544 note 4.
- 9 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 4(5).

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**546. Provision of information and marking.**

Any person who:

- 706 (1) designs for another any pressure system<sup>1</sup> or any article which is intended to be a component part thereof; or
- 707 (2) supplies (whether as manufacturer, importer or in any other capacity) any pressure system or any such article,

must provide sufficient written information<sup>2</sup> concerning its design, construction, examination<sup>3</sup>, operation and maintenance as may reasonably foreseeably be needed to enable the provisions of the relevant regulations<sup>4</sup> to be complied with<sup>5</sup>.

The employer of a person who modifies or repairs any pressure system must provide sufficient written information<sup>6</sup> concerning the modification or repair as may reasonably foreseeably be needed to enable the provisions of those regulations to be complied with<sup>7</sup>.

Any person who manufactures a pressure vessel must ensure that before it is supplied by him the specified information<sup>8</sup> is marked on the vessel, or on a plate attached to it, in a visible, legible and indelible form; and no person may import a pressure vessel unless it is so marked<sup>9</sup>. No person may:

- 708 (a) remove from a pressure vessel any mark or plate containing any of the specified information<sup>10</sup>;
- 709 (b) falsify any mark on a pressure system, or on a plate attached to it, relating to its design, construction, test or operation<sup>11</sup>.

1 As to the meaning of 'pressure system' see PARA 544.

2 The information referred to in the text must (1) in the case of head (1) in the text, be provided with the design; (2) in the case of head (2) in the text, be provided with the pressure system or article when it is supplied by that person: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(3)(a), (b). As to the meaning of 'written' see PARA 544 note 19.

3 As to the meaning of 'examination' see PARA 545 note 4.

4 Ie the provisions of the Pressure Systems Safety Regulations 2000, SI 2000/128: see PARAS 544-545; the text and notes 5-11; and PARA 547 et seq.

5 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(1).

6 The information referred to in the text must be provided to the user of the system immediately after the modification or repair: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(3)(c).

7 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(2).

8 Ie the information specified in the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(4), Sch 3. That information is (1) the manufacturer's name; (2) a serial number to identify the vessel; (3) the date of manufacture of the vessel; (4) the standard to which the vessel was built; (5) the maximum allowable pressure of the vessel; (6) the minimum allowable pressure of the vessel where it is other than atmospheric; and (7) the design temperature: Sch 3. 'Maximum allowable pressure' and 'minimum allowable pressure' mean the maximum pressure and minimum pressure respectively for which a pressure vessel is designed: reg 2(1).

- 9 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(4).
- 10 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(5).
- 11 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5(6).

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#### **547. Installation, operation and maintenance.**

The employer of a person who installs a pressure system<sup>1</sup> at work must ensure that nothing about the way in which it is installed gives rise to danger<sup>2</sup> or otherwise impairs the operation of any protective device<sup>3</sup> or inspection facility<sup>4</sup>.

The user<sup>5</sup> of an installed system<sup>6</sup> and owner<sup>7</sup> of a mobile system<sup>8</sup> must not operate the system or allow it to be operated unless he has established the safe operating limits<sup>9</sup> of that system<sup>10</sup>. The owner of a mobile system must, if he is not also the user of it:

- 710 (1) supply the user with a written statement specifying the safe operating limits of that system established pursuant to the above requirement; or
- 711 (2) ensure that the system is legibly and durably marked with such safe operating limits and that the mark is clearly visible<sup>11</sup>.

The user of an installed system and owner of a mobile system must not operate the system or allow it to be operated unless he has a written scheme for the periodic examination<sup>12</sup>, by a competent person<sup>13</sup>, of the following parts of the system:

- 712 (a) all protective devices;
- 713 (b) every pressure vessel and every pipeline<sup>14</sup> in which (in either case) a defect may give rise to danger; and
- 714 (c) those parts of the pipework<sup>15</sup> in which a defect may give rise to danger,

and such parts of the system must be identified in the scheme<sup>16</sup>.

That user or owner must ensure that:

- 715 (i) the scheme has been drawn up, or certified as being suitable<sup>17</sup>, by a competent person;
- 716 (ii) the content of the scheme is reviewed at appropriate intervals by a competent person for the purpose of determining whether it is suitable in current conditions of use of the system and its content is modified in accordance with any recommendations made by that competent person arising out of that review<sup>18</sup>.

The user of an installed system and the owner of a mobile system must ensure that those parts of the pressure system included in the scheme of examination are examined by a competent person within the intervals specified in the scheme and, where the scheme so provides, before the system is used for the first time<sup>19</sup>. Before each examination they must take all appropriate safety measures to prepare the system for examination, including any such measures as are specified<sup>20</sup> in the scheme of examination<sup>21</sup>. Where a competent person undertakes an examination for these purposes he must carry out that examination properly and in accordance with the scheme of examination<sup>22</sup>. Where he has carried out an examination for these purposes he must make a written report of the examination, sign it or add his name to it, date it and send it to the user (in the case of an installed system) or owner (in the case of a mobile system)<sup>23</sup>. Where, however, the competent person is the user (in the case of an installed

system) or owner (in the case of a mobile system), this requirement to send the report to the user or owner does not apply, but he must make the report by the time it would have been required to have been sent to him if he had not been the competent person<sup>24</sup>. The required report must:

- 717 (A) state which parts of the pressure system have been examined, the condition of those parts and the results of the examination;
- 718 (B) specify any repairs or modifications to, or changes in the established safe operating limits of, the parts examined which, in the opinion of the competent person, are necessary to prevent danger or to ensure the continued effective working of the protective devices, and specify the date by which any such repairs or modifications must be completed or any such changes to the safe operating limits must be made;
- 719 (C) specify the date within the limits set by the scheme of examination after which the pressure system may not be operated without a further examination under the scheme of examination<sup>25</sup>; and
- 720 (D) state whether in the opinion of the competent person the scheme of examination is suitable (for the purpose of preventing danger from those parts of the pressure system included in it) or should be modified, and if the latter state the reasons<sup>26</sup>.

The user of an installed system and the owner of a mobile system which has been so examined must ensure that the system is not operated, and no person may supply such a mobile system for operation, after (in each case), the date specified under head (B) above, unless the repairs or modifications specified under that head have been completed, and the changes in the established safe operating limits so specified have been made; or the date specified under head (C) above<sup>27</sup> unless a further examination has been carried out under the scheme of examination<sup>28</sup>. The owner of a mobile system must ensure that the date specified under head (3) above is legibly and durably marked on the mobile system and that the mark is clearly visible<sup>29</sup>.

The user of an installed system and the owner of a mobile system must provide for any person operating the system adequate and suitable instructions for the safe operation of the system and the action to be taken in the event of any emergency<sup>30</sup>; and the user of a pressure system must ensure that it is not operated except in accordance with the instructions for its safe operation so provided<sup>31</sup>.

The user of an installed system and the owner of a mobile system must ensure that the system is properly maintained in good repair, so as to prevent danger<sup>32</sup>. The employer of a person who modifies or repairs a pressure system at work must ensure that nothing about the way in which it is modified or repaired gives rise to danger or otherwise impairs the operation of any protective device or inspection facility<sup>33</sup>.

1 As to the meaning of 'pressure system' see PARA 544.

2 As to the meaning of 'danger' see PARA 545 note 3.

3 As to the meaning of 'protective device' see PARA 544 note 4.

4 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 6.

5 As to the meaning of 'user' see PARA 545 note 4.

6 As to the meaning of 'installed system' see PARA 545 note 4.

7 As to the meaning of 'owner' see PARA 545 note 4.

- 8 As to the meaning of 'mobile system' see PARA 545 note 4.
- 9 'Safe operating limits' means the operating limits (incorporating a suitable margin of safety) beyond which system failure is liable to occur: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(1). As to the meaning of 'system failure' see PARA 545 note 3.
- 10 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 7(1).
- 11 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 7(2).
- 12 As to the meaning of 'examination' see PARA 545 note 4.
- 13 As to the meaning of 'competent person' see PARA 545 note 4.
- 14 As to the meaning of 'pipeline' see PARA 544 note 6.
- 15 As to the meaning of 'pipework' see PARA 544 note 3.
- 16 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 8(1).
- 17 No person may draw up or certify such a scheme of examination unless the scheme is suitable and (1) specifies the nature and frequency of examination; (2) specifies any measures necessary to prepare the pressure system for safe examination other than those it would be reasonable to expect the user (in the case of an installed system) or owner (in the case of a mobile system) to take without specialist advice; and (3) where appropriate, provides for an examination to be carried out before the pressure system is used for the first time: Pressure Systems Safety Regulations 2000, SI 2000/128, reg 8(3). References in reg 8(2), (3) to the suitability of the scheme are references to its suitability for the purposes of preventing danger from those parts of the pressure system included in the scheme: reg 8(4).
- 18 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 8(2).
- 19 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(1)(a).
- 20 Ie specified pursuant to the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 8(3)(b): see note 17 head (3).
- 21 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(1)(b).
- 22 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(2).
- 23 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(3) (amended by SI 2001/1426). That report must be so sent as soon as is practicable after completing the examination (or, in the case of integrated installed systems where the examination is part of a series, as soon as is practicable after completing the last examination in that series), and in any event to arrive (1) within 28 days of the completion of the examination (or, in the case of integrated installed systems where the examination is part of a series, within 28 days of the completion of the last examination in that series); or (2) before the date specified in the report under the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(5)(b) (see head (b) in the text), whichever is sooner: reg 9(3).
- 24 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(4).
- 25 The date specified in a report under the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(5) (c) (see head (c) in the text) may be postponed to a later date by agreement in writing between the competent person who made the report and the user (in the case of an installed system) or owner (in the case of a mobile system) if (1) such postponement does not give rise to danger; (2) only one such postponement is made for any one examination; and (3) such postponement is notified by the user or owner in writing to the enforcing authority for the premises at which the pressure system is situated, before the date specified in the report under reg (5)(c): reg 9(7). Where the competent person is the user (in the case of an installed system) or owner (in the case of a mobile system) the above reference to an agreement in writing does not apply, but there must be included in the notification under head (3) above a declaration that the postponement will not give rise to danger: reg 9(8).
- 26 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(5).
- 27 Ie or, if that date has been postponed under the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(7) (see note 25), the postponed date: reg 9(6)(b).
- 28 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(6).

- 29 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(9).
- 30 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 11(1).
- 31 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 11(2).
- 32 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 12.
- 33 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 13.

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#### **548. Action in case of imminent danger.**

If the competent person<sup>1</sup> carrying out an examination<sup>2</sup> under the scheme of examination<sup>3</sup> is of the opinion that the pressure system<sup>4</sup> or part of the pressure system will give rise to imminent danger<sup>5</sup> unless certain repairs or modifications have been carried out or unless suitable changes to the operating conditions have been made, then he must forthwith<sup>6</sup> make a written report<sup>7</sup> to that effect identifying the system and specifying the repairs, modifications or changes concerned<sup>8</sup>. He must give the report:

- 721 (1) in the case of an installed system<sup>9</sup>, to the user<sup>10</sup>; or
- 722 (2) in the case of a mobile system<sup>11</sup>, to the owner<sup>12</sup> and to the user, if any<sup>13</sup>.

Within 14 days of the completion of the examination the competent person must send a written report containing the same particulars to the enforcing authority<sup>14</sup> for the premises<sup>15</sup> at which the pressure system is situated<sup>16</sup>.

Where a report is given in accordance with the above requirements to:

- 723 (a) the user of a pressure system, he must ensure that the system or, if the report only affects a discrete part of the system, that part, is not operated;
- 724 (b) the owner of a mobile system, he must take all reasonably practicable steps<sup>17</sup> to ensure that the system or, if the report only affects a discrete part of the system, that part, is not operated,

until the repairs, modifications or changes, as the case may be, have been carried out or made<sup>18</sup>.

1 As to the meaning of 'competent person' see PARA 545 note 4.

2 As to the meaning of 'examination' see PARA 545 note 4.

3 As to the scheme of examination see PARA 547.

4 As to the meaning of 'pressure system' see PARA 544.

5 As to the meaning of 'danger' see PARA 545 note 3.

6 Ie without prejudice to the requirements of the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9: see PARA 547.

7 As to the meaning of 'written' see PARA 544 note 19.

8 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 10(1).

9 As to the meaning of 'installed system' see PARA 545 note 4.

10 As to the meaning of 'user' see PARA 545 note 4.

11 As to the meaning of 'mobile system' see PARA 545 note 4.



12 As to the meaning of 'owner' see PARA 545 note 4.

13 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 10(1)(a), (b). Where the competent person referred to in reg 10(1) is the user (in the case of an installed system) or owner (in the case of a mobile system) the requirement to give the report to the user or owner does not apply, and the reference in reg 10(2) (see the text and notes 17-18) to the giving of the report to the user or owner is to be construed as a reference to the making of the report by him: reg 10(3).

14 As to the meaning of 'enforcing authority' see the Health and Safety at Work etc Act 1974 s 18(7); and PARA 352 note 2.

15 As to the meaning of 'premises' see PARA 302 note 6.

16 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 10(1).

17 As to what is 'reasonably practicable' see PARA 417.

18 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 10(2).

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#### **549. Keeping of records etc.**

The user<sup>1</sup> of an installed system<sup>2</sup> and the owner<sup>3</sup> of a mobile system<sup>4</sup> must keep:

- 725 (1) the last report relating to the system made<sup>5</sup> by the competent person<sup>6</sup>;
- 726 (2) any such previous reports if they contain information which will materially assist in assessing whether the system is safe to operate or whether any repairs or modifications to the system can be carried out safely;
- 727 (3) any information provided<sup>7</sup> or any specified instructions<sup>8</sup> which relate to those parts of the pressure system<sup>9</sup> included in the scheme of examination<sup>10</sup>; and
- 728 (4) any agreement within the limits set by the scheme of examination after which the pressure system may not be operated without a further examination under the scheme of examination<sup>11</sup> and, in a case where the competent person is the user (in the case of an installed system) or owner (in the case of a mobile system)<sup>12</sup>, a copy of the required notification<sup>13</sup>, until a further examination has been carried out since that agreement or notification under the scheme of examination<sup>14</sup>.

Anything so required to be kept must be kept:

- 729 (a) in the case of an installed system, at the premises<sup>15</sup> where the system is installed, or at other premises approved for these purposes by the enforcing authority<sup>16</sup> responsible for enforcing the Pressure Systems Safety Regulations 2000<sup>17</sup> at the premises where the system is installed;
- 730 (b) in the case of a mobile system, at the premises in Great Britain<sup>18</sup> from which the deployment of the system is controlled;
- 731 (c) in the case of anything required to be kept in writing<sup>19</sup>, by means whereby it is capable of being reproduced<sup>20</sup> at the premises referred to in head (1) or head (2) above as appropriate<sup>21</sup>.

Where the user or owner of a pressure system or part of it changes, the previous user or owner must as soon as is practicable<sup>22</sup> give to the new user or owner in writing anything relating to that system or part, as the case may be, kept by him under the above requirements<sup>23</sup>.

1 As to the meaning of 'user' see PARA 545 note 4.

2 As to the meaning of 'installed system' see PARA 545 note 4.

3 As to the meaning of 'owner' see PARA 545 note 4.

4 As to the meaning of 'mobile system' see PARA 545 note 4.

5 Ie made under the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(3): see PARA 547.

6 As to the meaning of 'competent person' see PARA 545 note 4.

7 Ie under the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 5: see PARA 546.

8     le any instructions specified in European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1) on the approximation of the laws of the member states concerning pressure equipment, Annex I section 3.4, which Annex is set out in the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 2 (see PARA 559 note 6) and provided pursuant to the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 7(1), (3) or reg 8(1), (3)(b)(i) (see PARA 547): reg 14(1)(c)(ii).

9     As to the meaning of 'pressure system' see PARA 544.

10    As to the scheme of examination see PARA 547.

11    le any agreement made pursuant to the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(7): see PARA 547.

12    le in a case to which the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(8) applies: see PARA 547.

13    le the notification referred to in the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 9(7)(c): see PARA 547.

14    Pressure Systems Safety Regulations 2000, SI 2000/128, reg 14(1).

15    As to the meaning of 'premises' see PARA 302 note 6.

16    As to the meaning of 'enforcing authority' see PARA 352 note 2.

17    le the Pressure Systems Safety Regulations 2000, SI 2000/128: see PARA 544 et seq; the text and notes 1-16, 18-23; and PARA 550.

18    As to the meaning of 'Great Britain' see PARA 305 note 7.

19    le a case to which the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(2) applies: see PARA 544 note 19.

20    le as required by the Pressure Systems Safety Regulations 2000, SI 2000/128, reg 2(2)(a): see PARA 544 note 19.

21    Pressure Systems Safety Regulations 2000, SI 2000/128, reg 14(2).

22    As to the meaning of 'practicable' see PARA 417.

23    Pressure Systems Safety Regulations 2000, SI 2000/128, reg 14(3).

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**550. Precautions to prevent pressurisation of certain vessels.**

The user<sup>1</sup> of a vessel:

- 732 (1) which is constructed with a permanent outlet to the atmosphere or to a space where the pressure does not exceed atmospheric pressure; and
- 733 (2) which could become a pressure vessel if that outlet were obstructed,

must ensure that that outlet is at all times kept open and free from obstruction when the vessel is in use<sup>2</sup>.

1 As to the meaning of 'user' see PARA 545 note 4.

2 Pressure Systems Safety Regulations 2000, SI 2000/128, reg 15.

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## (ii) Simple Pressure Vessels

### 551. Application of the Simple Pressure Vessels (Safety) Regulations 1991.

The safety of simple pressure vessels is governed by the Simple Pressure Vessels (Safety) Regulations 1991<sup>1</sup> which came into force on 31 December 1991<sup>2</sup> and apply only to vessels manufactured in series<sup>3</sup>. For these purposes, 'vessel' means a simple pressure vessel being a welded vessel intended to contain air or nitrogen at a gauge pressure greater than 0.5 bar, not intended for exposure to flame, and having the following characteristics:

- 734 (1) the components and assemblies contributing to the strength of the vessel under pressure are made either of non-alloy quality steel, or of non-alloy aluminium, or of non-age hardening aluminium alloy;
- 735 (2) the vessel consists either:  
121
- 198. (a) of a cylindrical component with circular cross-section, closed at each end, each end being either outwardly dished or flat and being also co-axial with the cylindrical component; or
- 199. (b) of two co-axial outwardly dished ends;  
122
- 736 (3) the maximum working pressure<sup>4</sup> (PS) is not more than 30 bar, and PS.V (being the product of PS and the vessel's capacity expressed in litres) is not more than 10,000 bar.litres;
- 737 (4) the minimum and maximum working temperatures<sup>5</sup> are within the specified limits<sup>6</sup>.

The 1991 regulations do not apply to:

- 738 (i) vessels designed specifically for nuclear use, where vessel failure might or would result in an emission of radioactivity;
- 739 (ii) vessels intended specifically for installation in, or for use as part of the propulsive system of, a ship<sup>7</sup> or aircraft; or
- 740 (iii) fire-extinguishers<sup>8</sup>.

Nor do they apply:

- 741 (A) in the case of a vessel or a relevant assembly<sup>9</sup> if the supplier<sup>10</sup> believes, with reasonable cause, that it will be taken into service in a country outside the European Economic Area ('EEA')<sup>11</sup>, unless the vessel, or the vessel incorporated in the relevant assembly, as the case may be, bears the CE marking or any other inscription which is likely to be confused with the CE marking<sup>12</sup>;
- 742 (B) to any vessel or relevant assembly which has previously been taken into service in the EEA<sup>13</sup>.

Approved bodies are charged by the EEA states with functions relating to the safety of vessels supplied or taken into service in the EEA, and in particular that of providing safety clearance<sup>14</sup>. The Secretary of State<sup>15</sup> may from time to time designate such qualified persons<sup>16</sup> as he thinks fit to be United Kingdom approved bodies for these purposes; and such a designation remains in force either for a period specified by the Secretary of State, or for an indeterminate period<sup>17</sup>.

1    le the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749: see the text and notes 2-17; and PARA 552 et seq.

2    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 1.

3    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 3(1) (substituted by SI 1994/3098). There is series manufacture for these purposes if more than one vessel of the same type is manufactured during a given period by the same continuous manufacturing processes, in accordance with a common design: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(4).

4    For the purposes of the definition set out in the text, 'maximum working pressure' means the maximum gauge pressure which may be exerted under normal conditions of use: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(1)(i).

5    For the purposes of the definition set out in the text, 'minimum working temperature' means the lowest stabilised temperature in the wall of the vessel under normal conditions of use; and 'maximum working temperature' means the highest stabilised temperature in the wall of the vessel under normal conditions of use: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(1)(ii), (iii).

6    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(1). The specified limits are that the minimum working temperature is not lower than minus 50 degrees C, and the maximum working temperature is not higher than 300 degrees C in the case of steel vessels and 100 degrees C in the case of aluminium or aluminium alloy vessels: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(1)(d).

7    For these purposes, 'ship' has the meaning given by the Merchant Shipping Act 1995 s 313(1) (ie it includes every description of vessel used in navigation): Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 3(2); Interpretation Act 1978 s 17(2)(a).

8    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 3(2).

9    For these purposes, 'relevant assembly' means any assembly incorporating a vessel: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(3).

10   For these purposes, 'supply' is to be read in accordance with the Consumer Protection Act 1987 s 46 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 523) and includes offering or agreeing to supply, and exposing or possessing for supply, and 'supplied' and 'supplier' have the corresponding meanings: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(3).

11   Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 2(6), 6(2) (reg 6(2) substituted, reg 6(4) amended, and regs 2(6), (7), 6(5) added, by SI 1994/3098).

12   Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 6(4) (as amended: see note 11). For these purposes, a reference to the 'CE marking' or the 'CE conformity marking' is a reference to a marking consisting of the initials 'CE' in the form shown in the specimen in Sch 2 (substituted by SI 1994/3098); and the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 2 has effect for making provision in relation to the affixing of that marking and other matters incidental thereto: reg 2(7) (as added: see note 11). The CE conformity marking consists of the initials 'CE' in the prescribed form; and if it is reduced or enlarged the proportions illustrated in Sch 2 para 1 must be respected: Sch 2 paras 1, 2 (as so substituted). The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm: Sch 2 para 3 (as so substituted). The CE marking, and the other inscriptions specified, must be affixed in a visible, easily legible and indelible form, either to the vessel itself or to a data plate attached to the vessel in such a way that it cannot be removed: Sch 2 para 4 (as so substituted). The CE marking must be followed by the identification number of the approved body responsible for EC verifications or EC surveillance: Sch 2 para 5 (as so substituted).

The vessel or data plate must bear at least the following information: (1) the maximum working pressure (PS in bar); (2) the maximum working temperature (Tmax in degrees C); (3) the minimum working temperature (Tmin in degrees C); (4) the capacity of the vessel (V in litres); (5) the name or mark of the manufacturer; (6) the type and serial or batch identification of the vessel; and (7) the last two digits of the year in which the CE marking

was affixed. Where the data plate is used, it must be so designed that it cannot be re-used and must include a vacant space to enable other information to be provided: Sch 2 para 6 (as so substituted). Where a vessel is the subject of other Community Directives covering other aspects and which also provide for the affixing of the CE marking, such marking must indicate that the vessel in question is also presumed to conform to those other Directives: Sch 2 para 7 (as so substituted). Where one or more of the other Directives referred to in Sch 2 para 7 allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking is to indicate conformity only to the Directives applied by the manufacturer. In this case, particulars of the Directives applied, as published in the Official Journal of the European Community, must be given in the documents, notices or instructions required by the Directives and accompanying such a vessel: Sch 2 para 8 (as so substituted). It is to be presumed that a vessel which bears the CE marking complies with all the provisions of EC Council Directive 87/404 (OJ L220, 08.08.1987, p 48) on the harmonisation of the laws of the member states relating to simple pressure vessels, including the conformity assessment procedures referred to in Ch II thereof (being the means whereby safety clearance is obtained pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 9-13) unless there are reasonable grounds for suspecting that it does not so comply: Sch 2 para 9 (as so substituted). Subject to the other provisions of the 1991 regulations, any other marking may be affixed to the vessels or the data plate provided that the visibility and legibility of the CE marking is not thereby reduced: Sch 2 para 10 (as so substituted). As to approved bodies see the text and notes 14-17.

13 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 2(6), 6(5) (as added: see note 11). For transitional exceptions see reg 6(1), (3); and for consequential amendments to United Kingdom law see reg 24 (amended by SI 1994/3098). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

14 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 2(6), 7(1) (reg 2(6) as added: see note 11). As to safety clearance see PARA 552 note 5.

15 As to the Secretary of State see PARA 349 et seq.

16 'Qualified person' means a person, which may include the Secretary of State, who meets the minimum criteria; and 'minimum criteria' means the criteria listed in Annex III of the Directive (minimum criteria to be taken into account by EEA states when appointing inspection bodies): Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 7(5).

17 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 7(2). A designation (1) may relate to all descriptions of vessels or such descriptions (which may be framed by reference to any circumstances whatsoever) of vessels as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following withdrawal of the designation; (3) must be withdrawn if it appears to the Secretary of State that the approved body is no longer a qualified person or upon 90 days' notice in writing to the Secretary of State, at the request of the approved body; and (4) may be withdrawn if it appears to the Secretary of State that any of the conditions is not complied with: reg 7(3). If for any reason an approved body ceases to be designated under reg 7, the Secretary of State may authorise another United Kingdom approved body to take over its functions in respect of such cases as he may specify: reg 7(4).

Subject to reg 8(2), (3), a United Kingdom approved body may charge such fees in respect of (a) the provision of safety clearance; (b) application of the CE marking to a vessel covered by an EC verification certificate pursuant to reg 14(1) (revoked); and (c) performing EC surveillance pursuant to reg 17 (see PARA 553), as it may determine; provided that such fees are not to exceed the sum of the following: (i) the costs incurred or to be incurred by the approved body in performing the relevant function; and (ii) an amount on account of profit which is reasonable in the circumstances having regard to the character and extent of the work done or to be done by the body on behalf of the applicant or manufacturer as the case may be and the commercial rate normally charged on account of profit for that work or similar work: reg 8(1) (amended by SI 1994/3098). This power includes power (A) in heads (a) and (b) above, to require the payment of fees or a reasonable estimate thereof with the application; and (B) in head (c) above, in a case where the fees remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, to suspend the EC certificate of conformity by 14 days' notice in writing that, unless the fees are paid before the expiry of the notice, the certificate will be suspended until payment of the fees has been received: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 8(2). Nothing in reg 8 applies where the United Kingdom approved body is a government department, and for this purpose 'government department' has the meaning given by the Finance Act 1973 s 56(5): Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 8(3).

## UPDATE

### 551 Application of the Simple Pressure Vessels (Safety) Regulations 1991

NOTE 12--Directive 87/404 replaced: European Parliament and EC Council Directive 2009/105 (OJ L264, 8.10.2009, p 12).



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## 552. Prescribed safety requirements.

A vessel<sup>1</sup> in Category A<sup>2</sup> complies with the prescribed safety requirements<sup>3</sup> if:

- 743 (1) it meets the specified essential safety requirements<sup>4</sup>;
- 744 (2) it has safety clearance<sup>5</sup>;
- 745 (3) it bears the CE marking<sup>6</sup> accompanied by the other specified inscriptions<sup>7</sup>, that mark and such other inscriptions being affixed in accordance with the prescribed requirements<sup>8</sup> and it complies in all other respects with the requirements relating to CE marking;
- 746 (4) in the case of a vessel or relevant assembly<sup>9</sup> supplied<sup>10</sup> in the United Kingdom<sup>11</sup>, it is accompanied by the manufacturer's instructions<sup>12</sup>;
- 747 (5) in the case where a person:  
123
  - 200. (a) being the manufacturer of a vessel, himself takes that vessel or a relevant assembly incorporating that vessel into service; or
  - 201. (b) having imported a vessel or relevant assembly into the United Kingdom, himself takes that vessel or a relevant assembly incorporating that vessel or the first mentioned relevant assembly into service,
- 124
  - 748 that person ensures that, at the time of taking into service, the manufacturer's instructions are made available to all persons as are concerned with the vessel's installation and operation; and
  - 749 (6) it is in fact safe<sup>13</sup>.

A vessel in Category B<sup>14</sup> complies with the prescribed safety requirements if:

- 750 (i) it is manufactured in accordance with engineering practice recognised as sound in an EEA state;
- 751 (ii) it bears the specified inscriptions<sup>15</sup>, other than the CE marking, affixed in accordance with the prescribed requirements<sup>16</sup> and it complies in all other respects with those requirements; and
- 752 (iii) it is in fact safe<sup>17</sup>.

1 As to the meaning of 'vessel' see PARA 551.

2 The categories of vessels relevant for these purposes are (1) Category A: vessels whose PS.V is more than 50 bar.litres, this category being subdivided into (a) Category A.1: vessels whose PS.V is more than 3,000 bar.litres; (b) Category A.2: vessels whose PS.V is more than 200 but not more than 3,000 bar.litres; and (c) Category A.3: vessels whose PS.V is more than 50 but not more than 200 bar.litres; (2) Category B: vessels whose PS.V is 50 bar.litres or less: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(2).

3 It complies with the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4: see the text and notes 4-17.

4 It is the essential safety requirements specified in the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 1. Schedule 1 sets out the requirements with regard to (1) materials, which must be selected according to the intended use of the vessels and in accordance with the provisions relating to (a) pressurised components; (b) steel vessels; (c) aluminium vessels; (d) welding materials; (e) accessories contributing to the

strength of the vessel; (f) non-pressurised components (Sch 1 Pt I (paras 1-7)); (2) vessel design (Sch 1 Pt 2 (paras 8-9)); (3) manufacturing processes (Sch 1 Pt 3 (paras 10-12)); (4) definitions and symbols (Sch 1 Pt 4 (paras 13-14)).

5 A vessel has safety clearance if an approved body has issued in respect of it an EC verification certificate or an EC certificate of conformity pursuant to the procedures described in the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 9-13, and for these purposes 'safety clearance' is to be construed accordingly: reg 4(2). Regulations 9-13 specify the means whereby safety clearance is obtained: reg 9(1). A person who, whether in the United Kingdom or elsewhere, proposes to manufacture vessels in Category A which are to be supplied or taken into service in the EEA must, before commencing series manufacture, apply (either himself or through his authorised representative established in the EEA) for and obtain for the vessels either an EC certificate of adequacy or an EC type-examination certificate: regs 2(6), 9(2). If the vessels are to be so manufactured as to conform with a relevant national standard, it is for the manufacturer or his authorised representative to choose whether to apply for a certificate of adequacy or a type-examination certificate. In any other case, a type-examination certificate is required: reg 9(3). Following compliance with reg 9(2): (1) in the case of vessels in Category A.1, following commencement of series manufacture there must be applied for and obtained an EC verification certificate; and (2) in the case of vessels in Category A.2 or A.3, either following commencement of series manufacture there must be applied for and obtained a verification certificate or before commencement of series manufacture there must be carried out the alternative procedure (described in reg 13) by which a manufacturer obtains an EC certificate of conformity: reg 9(4). Application for any of the certificates mentioned above except the certificate of conformity is made in writing by the manufacturer or his authorised representative to one or other of the approved bodies: reg 9(5). Application for a certificate of conformity is made in writing by the manufacturer to the approved body which issued the certificate of adequacy or the type-examination certificate, as the case may be: reg 9(6). All applications to an approved body, and documents accompanying any application, are to be in the official language of the EEA state in which that body is established (in the United Kingdom, English), or in another language acceptable to it: regs 2(6), 9(7). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

Application for an EC certificate of adequacy must be accompanied by the design and manufacturing schedule conforming with Sch 3: reg 10(1). A United Kingdom approved body to which such application is made must, if satisfied that the schedule contains all the required information and that vessels manufactured in accordance with the schedule would conform with a relevant national standard, issue a certificate of adequacy accordingly: reg 10(2). If the United Kingdom approved body is not so satisfied and refuses to issue a certificate of adequacy, it must make known in writing to the applicant the reasons for the refusal: reg 10(3). The design and manufacturing schedule must contain a description of the techniques and operations employed in order to meet a relevant national standard or the essential safety requirements specified in Sch 1: Sch 3 para 1. For further requirements see Sch 3 paras 2-4.

EC type-examination is the procedure whereby an approved body ascertains, and certifies by means of an EC type-examination certificate, that a prototype representative of the production envisaged satisfies the requirements of EC Council Directive 87/404 (OJ L220, 08.08.1987, p 48): Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 11(1). Application for a type-examination certificate must specify the name and address of the applicant, specify the proposed place of manufacture of the vessels to which the application relates and be accompanied by the prototype and the design and manufacturing schedule conforming with Sch 3. The prototype may be representative of a family of vessels. Schedule 4 describes what is to be regarded as a family for this purpose: reg 11(2). A United Kingdom approved body to which such application is made must satisfy itself that the design and manufacturing schedule contains all the required information: reg 11(3). The United Kingdom approved body must also examine, and perform such tests as it considers appropriate on, the prototype and, if satisfied that the prototype is manufactured in conformity with the schedule, and (whether or not conforming with a relevant national standard) meets the essential safety requirements specified in Sch 1, and is safe, issue a type-examination certificate recording its conclusions arrived at under this provision: reg 11(4). There must be specified in the type-examination certificate any conditions subject to which it is to have effect; and it must be accompanied by the descriptions and drawings necessary for the identification of the prototype: reg 11(5). A United Kingdom approved body which has issued a type-examination certificate must if so requested, supply copies of the certificate to the Secretary of State, the European Commission, any other approved body or any other EEA state; and on receipt of a reasoned request from any of the above, supply copies of the relevant schedule and of its reports concerning the examination and tests carried out: reg 11(6). If the United Kingdom approved body is not satisfied that the requirements of reg 11(3), (4)(b) are met and refuses to issue a type-examination certificate, it must make known in writing to the applicant and to the other approved bodies the reasons for the refusal: reg 11(7). Where a United Kingdom approved body withdraws a type-examination certificate, it must so inform the Secretary of State, giving its reasons, with a view to this information being passed by him to the Commission and the other EEA states: regs 2(6), 11(8) (added by SI 1994/3098).

EC verification is the procedure whereby a manufacturer or his authorised representative established within the EEA ensures and declares that the vessels which have been checked in accordance with the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 12(3) are in conformity to the type described in the EC type-examination certificate or with the design and manufacturing schedule conforming with Sch 3 having

received a certificate of adequacy: reg 12(1) (reg 12 substituted by SI 1994/3098). The manufacturer must take all the necessary measures for the manufacturing process to ensure that the vessels conform to the type described in the EC type-examination certificate or to the design and manufacturing schedule. The manufacturer or his authorised representative established within the EEA must affix the CE marking to each vessel and draw up a declaration of conformity: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 12(2) (as so substituted). A United Kingdom approved body to which application is made for EC verification must carry out the appropriate examinations and tests in order to check the conformity of the vessels with the requirements of the Directive by examination and testing of vessels in accordance with reg 12(3). In the case of accepted batches, the approved body must affix, or cause to be affixed, its identification number to each recipient and draw up a written certificate of conformity relating to the tests carried out, provided that the manufacturer may, under the responsibility of the approved body, affix the latter's identification number during the manufacturing process: reg 12(4)(a) (as so substituted). All recipients in the batch may be placed on the market except for those which have not successfully undergone a hydrostatic test or a pneumatic test: reg 12(4)(b) (as so substituted). If a batch is rejected by an approved body carrying out examination and testing in accordance with this regulation in the United Kingdom, the approved body must take appropriate measures to prevent the putting on the market of that batch and, in the event of frequent rejection of batches, the approved body may suspend the statistical verification: reg 12(5) (as so substituted).

In cases where the manufacturer of vessels in Category A.2 or A.3 elects not to apply for EC verification, he may instead by means of the following procedure obtain an EC certificate of conformity: reg 13(1). Application for a certificate of conformity must, before commencement of series manufacture, be made to the approved body which issued the relevant EC certificate of adequacy or EC type-examination certificate (as the case may be) and be accompanied by a document in which are described the processes by which the vessels are to be manufactured and all the measures which are to be taken to ensure that the vessels when manufactured conform with a relevant national standard or (as the case may be) with the relevant prototype: see reg 13(2), (3). A United Kingdom approved body to which such application is made must, if satisfied that the document and the schedule contain all the required information and that vessels manufactured in accordance with the document and schedule will conform with a relevant national standard or, if not, then with the essential safety requirements specified in Sch 1, issue a certificate of conformity accordingly, covering the vessels proposed to be manufactured: reg 13(4). If the United Kingdom approved body is not so satisfied and refuses to issue a certificate of conformity, it must make known in writing to the manufacturer the reasons for the refusal: reg 13(5). A reference for these purposes to a relevant national standard is a reference to a national standard of an EEA state, being a standard which transposes a harmonised standard the reference number of which has been published in the Official Journal of the European Community pursuant to EC Council Directive 87/404 (OJ L220, 08.08.1987, p 48) art 5.1: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 2(5) (substituted by SI 1994/3098).

6 As to the CE marking see PARA 551 note 12.

7 As specified in the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 2: see PARA 551 note 12.

8 As to the requirements of the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 2: see PARA 551 note 12.

9 As to the meaning of 'relevant assembly' see PARA 551 note 9.

10 As to the meaning of 'supplied' see PARA 551 note 10.

11 As to the meaning of 'United Kingdom' see PARA 305 note 8.

12 'Manufacturer's instructions' means instructions (1) issued by or on behalf of the manufacturer; and (2) complying with the requirements of the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4(5): reg 2(3). For the purpose of compliance with the 1991 regulations, the manufacturer's instructions must provide for the following information: (a) the manufacturer's name or mark; (b) vessel type, batch identification or other particulars identifying the vessel to which the instructions relate; (c) particulars of maximum working pressure expressed in bar, maximum and minimum working temperatures expressed in degrees C, and capacity of the vessel expressed in litres; (d) the intended use of the vessel; and (e) maintenance and installation requirements for vessel safety: reg 4(5). The language of the instructions must be (without prejudice to the instructions being also in any other language) as follows: (i) where the manufacturer believes (with reasonable cause) that the vessel is to be taken into service in a particular EEA state, in the official language or languages of that EEA state; (ii) where head (i) above does not apply but the manufacturer believes (with reasonable cause) that the vessel is destined for a particular EEA state, in the official language or languages of that EEA state; (iii) in any other case, in any official EEA language: regs 2(6), 4(5) (respectively added and amended by SI 1994/3098).

13 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4(1) (reg 4(1), (3), (4) amended by SI 1994/3098). 'Safe', in relation to a vessel, means that, when the vessel is properly installed and maintained and used for the purposes for which it is intended, there is no risk (apart from one reduced to a minimum) of its

being the cause or occasion of death or injury to persons or domestic animals, or damage to property: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4(4) (as so amended).

14 As to Category B vessels see note 2.

15 See note 7.

16 See note 8.

17 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4(3) (as amended: see note 13).

## **UPDATE**

### **552 Prescribed safety requirements**

NOTE 5--Directive 87/404 replaced: European Parliament and EC Council Directive 2009/105 (OJ L264, 8.10.2009, p 12).

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**553. Obligations of manufacturers, suppliers and importers.**

Subject to the transitional and other prescribed exceptions<sup>1</sup>, no person being:

- 753 (1) the manufacturer of a vessel<sup>2</sup>;
- 754 (2) the manufacturer of a relevant assembly<sup>3</sup> who imported the vessel incorporated therein from a country or territory outside the European Economic Area ('EEA'); or
- 755 (3) the person who imported a vessel (other than the person mentioned in head (2) above) or relevant assembly from such country or territory,

may supply such a vessel unless it complies with the prescribed safety requirements<sup>4</sup> or such a relevant assembly, as the case may be, unless the vessel incorporated therein so complies<sup>5</sup>.

Subject to the same exceptions:

- 756 (a) no person, being the manufacturer of a vessel, may himself take that vessel or a relevant assembly incorporating that vessel into service unless that vessel complies with the prescribed safety requirements<sup>6</sup>;
- 757 (b) no person, having imported a vessel or a relevant assembly from a country or territory outside the EEA, may himself take that vessel or a relevant assembly incorporating that vessel, or the first mentioned relevant assembly into service unless that vessel or the vessel incorporated into the relevant assembly complies with the prescribed safety requirements<sup>7</sup>;
- 758 (c) it is the duty of any person, not being a person mentioned in heads (1) to (3) above, who supplies a vessel or relevant assembly to ensure that such vessel or relevant assembly as the case may be is safe<sup>8</sup>.

No markings which are likely to deceive any person as regards the meaning and form of the CE marking<sup>9</sup> are to be affixed to a vessel<sup>10</sup>.

A manufacturer who has obtained an EC certificate of conformity<sup>11</sup> may commence series manufacture<sup>12</sup> and apply the CE marking to vessels which he declares to be in conformity:

- 759 (i) to the design and manufacturing schedule<sup>13</sup> on which a certificate of adequacy has been drawn up; or
- 760 (ii) to the relevant approved prototype<sup>14</sup>.

A person who supplies or takes into service a vessel which does not bear the CE marking must, at the request of an enforcement authority<sup>15</sup>, or of an officer of such an authority, give any information which he has, or which is available to him, concerning the date when the vessel was first supplied or taken into service in the EEA, and explain, so far as he is able, how it comes about that the vessel does not bear that mark<sup>16</sup>.

A manufacturer of vessels in Category A.2<sup>17</sup> who has executed an EC declaration of conformity as described above<sup>18</sup> becomes thereby subject to EC surveillance in respect of vessels in that category covered by that declaration<sup>19</sup>. In the United Kingdom, such a manufacturer must:

- 761 (A) authorise access at any reasonable time by or on behalf of the approved body<sup>20</sup> which issued the EC certificate of conformity, to any place where vessels covered by it, or relevant assemblies into which he has incorporated such vessels, are manufactured or stored by or on behalf of the manufacturer, for the purpose of inspecting the manufacturing processes and the vessels so covered;
- 762 (B) allow inspectors acting on the approved body's behalf to select random samples of vessels covered by the certificate, or relevant assemblies incorporating such vessels, for inspection;
- 763 (C) if so required by the inspectors, provide the specified information<sup>21</sup>; and
- 764 (D) comply with any reasonable request made by the approved body or on its behalf for additional information regarding any aspect of manufacture or any matter particularly relating to safety of the vessels covered by the certificate<sup>22</sup>.

In the United Kingdom, a manufacturer of vessels must retain specified documentation<sup>23</sup> for a period of at least ten years from the date on which the last vessel in the series is manufactured<sup>24</sup>.

1    le the exceptions in the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 6: see PARA 551.

2    As to the meaning of 'vessel' see PARA 551.

3    As to the meaning of 'relevant assembly' see PARA 551 note 9.

4    le unless it complies with the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 4: see PARA 552.

5    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 2(6), 5(1) (reg 2(6) added, and reg 5 substituted, by SI 1994/3098).

6    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 5(2) (as substituted: see note 5).

7    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, regs 2(6), 5(3) (as respectively added and substituted: see note 5).

8    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 5(4) (as substituted: see note 5). As to the meaning of 'safe' see PARA 552 note 13.

9    As to the CE marking see PARA 551 note 12.

10   Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 5(5) (as substituted: see note 5).

11   As to EC certificates of conformity see PARA 552 note 5.

12   As to the meaning of 'series manufacture' see PARA 551 note 3.

13   le submitted to the approved body pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 13(3)(b): see PARA 552 note 5.

14   Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 14(2) (reg 14(2) substituted, and reg 14(5) amended, by SI 1994/3098).

15   As to enforcement authorities for these purposes see PARA 554.

16   Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 14(5) (as amended: see note 13).

17   As to Category A.2 see PARA 552 note 2.

18 As to EC declarations of conformity see the text and notes 11-14.

19 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 16(1).

20 As to approved bodies see PARA 551. Approved bodies are charged by the EEA states with the function, in relation to a manufacturer of vessels in Category A.2 who is subject to EC surveillance (1) of ascertaining whether undertakings with regard to tests to be carried out in the course of manufacture given by him pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 13(3)(d) (see PARA 552 note 5) are actually carried out; and (2) of taking random samples of vessels (or relevant assemblies) at any place where vessels covered by an EC certificate of conformity (or relevant assemblies incorporating such vessels) are manufactured or stored by or on behalf of the manufacturer for the purposes of inspection: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 17(1). A United Kingdom approved body must perform that function in relation to manufacturers in the United Kingdom or elsewhere, in cases where it has issued an EC certificate of conformity in respect of vessels in Category A.2: reg 17(2). The United Kingdom approved body must in respect of each such manufacturer from time to time compile written reports of the activities carried out by it in the course of surveillance and, if so requested, supply copies of any such report to the Secretary of State, the European Commission, any other approved body or any other EEA state: reg 17(3). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

21 le (1) copies of any reports made by qualified personnel pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 13(3)(d)(iii); (2) in a case where the manufacturer has complied with reg 13(2), (3), so much of any particular information required to be comprised in the design and manufacturing schedule as has become available only subsequent to compliance with those provisions: reg 16(2)(c).

22 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 16(2).

23 The specified documentation is (1) copies of all documentation submitted by him or by his authorised representative established in the EEA to an approved body for the purpose of obtaining any of the EC certificates referred to in the 1991 regulations; (2) any certificates issued by an approved body to him or his authorised representative under those regulations or corresponding provisions having effect elsewhere in the EEA; (3) any documents accompanying any such certificate so issued; (4) in a case where the manufacturer has complied with the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 13(2), (3) (see PARA 552 note 5), so much of any particular information required to be comprised in the design and manufacturing schedule as has become available only subsequent to compliance with those provisions; (5) any EC declarations of conformity executed by him under reg 14(2); and (6) any reports made by qualified personnel pursuant to reg 13(3)(d)(iii): reg 15(1)(a)-(f).

24 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 15(1).

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#### 554. Enforcement.

In Great Britain<sup>1</sup>, in relation to vessels<sup>2</sup> and relevant assemblies<sup>3</sup> for use at work<sup>4</sup>, it is the duty of the Health and Safety Executive<sup>5</sup> to make adequate arrangements for the enforcement of the Simple Pressure Vessels (Safety) Regulations 1991<sup>6</sup>.

An enforcement authority<sup>7</sup> in England and Wales may apply for an order for the forfeiture of any vessels or relevant assemblies on the grounds that there has been a contravention in relation to them of any provision of those regulations<sup>8</sup>.

Contravention of certain provisions of the 1991 regulations is an offence<sup>9</sup>.

Except in the case of a vessel which, in the opinion of an enforcement authority, is not safe<sup>10</sup>, where an enforcement authority has reasonable grounds for suspecting that the CE marking<sup>11</sup> has not been properly affixed<sup>12</sup> to a vessel, it may give notice in writing<sup>13</sup> to the manufacturer of that vessel or his authorised representative established in the European Economic Area, as the case may be, and, subject to certain exceptions<sup>14</sup>, no enforcement action may be taken<sup>15</sup> and no proceedings may be brought<sup>16</sup> in respect of that vessel until such notice has been given and the person to whom it is given has failed to comply with its requirements<sup>17</sup>.

Where action has been taken by an enforcement authority to prohibit or restrict the supply or taking into service<sup>18</sup> of any vessel to which the 1991 regulations apply and which bears the CE marking, or a relevant assembly incorporating such a vessel, that authority must forthwith inform the Secretary of State<sup>19</sup> of the action taken, and the reasons for it, with a view to this information being passed by him to the European Commission<sup>20</sup>.

1 As to the meaning of 'Great Britain' see PARA 305 note 7.

2 As to the meaning of 'vessel' see PARA 551.

3 As to the meaning of 'relevant assembly' see PARA 551 note 9.

4 For these purposes, 'vessels for use at work' means vessels (1) designed for use or operation, whether exclusively or not, by persons at work; or (2) designed for use or operation, otherwise than at work, in non-domestic premises made available to persons as a place where they may use the vessels provided for their use there, and a reference to relevant assemblies for use at work is to be construed accordingly: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 19(1), Sch 5 para 9 (reg 19 substituted by SI 1994/3098). As to the meaning of 'non-domestic premises' see PARA 302 note 6.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 1(a). Accordingly a reference in the provisions applied to those regulations by Sch 5 para 1(b) to an 'enforcing authority' is to be construed as a reference to the Executive: Sch 5 para 1(a). The Health and Safety at Work etc Act 1974 ss 19-21, 22, 23, 24, 25A-28, 33-35, 38, 39 and 41 apply for the purposes of providing for the enforcement of the 1991 regulations and in respect of proceedings for contravention thereof as if (1) references to relevant statutory provisions were references to those sections as so applied and to those regulations; (2) references to articles, substances, articles or substances, or plant, were references to vessels or relevant assemblies; (3) references to the field of responsibility of an enforcing authority, however expressed, were omitted; (4) in s 20, s 20(3) were omitted; (5) in s 23, s 23(3), (4) and (6) were omitted; (6) in s 33: (a) in s 33(1), s 33(1)(a)-(d) were omitted, in s 33(1)(e) the words 'or 25' were omitted and s 33(1)(o) applied only to failure to comply with a court order under s 42(1)-(3) as so applied; (b) s 33(1A) were omitted; (c) in s 33(2), the reference to s 33(1)(d) were omitted; (d) s 33(2A) were omitted; (e) for s 33(3) there were substituted the following: '(3) A person guilty of an offence under any paragraph of subsection (1) not mentioned in the preceding subsection shall be liable (a) on



summary conviction, to a fine not exceeding level 5 on the standard scale; or (b) on conviction on indictment: (i) in the case of an offence under subsection (1)(j), to imprisonment for a term not exceeding two years, or a fine, or both; or (ii) in all other cases, to a fine.'; and (f) s 33(4) were omitted; and (7) in s 34, s 34(1)(a) and (b) were omitted: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 1(b) (amended by SI 1994/3098). The Health and Safety at Work etc Act 1974 ss 36(1), (2), 37 (see PARAS 859-860) and s 42(1)-(3) (see PARA 857) apply in relation to offences under s 33 (see PARAS 852-853) as so applied and as modified by head (6) above: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 1(c). As to enforcement in relation to vessels as consumer goods see Sch 5 para 3 (amended by SI 2003/1400).

Nothing in the 1991 regulations is to construed as preventing the taking of any action in respect of a vessel or relevant assembly to which those regulations apply under the provisions of the Health and Safety at Work etc Act 1974: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 7.

7 For these purposes, in England and Wales and in relation to vessels etc for use at work, 'enforcement authority' means the Health and Safety Executive: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 9.

8 Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 4(1). Such an application may be made, where proceedings have been brought in a magistrates' court for an offence in respect of a contravention in relation to some or all of the vessels or relevant assemblies of any provisions of the 1991 regulations, to that court, and where no such application had been made, by way of complaint to a magistrates' court: Sch 5 para 4(2)(a), (c). On such an application the court may make an order for the forfeiture of the vessels or relevant assemblies only if it is satisfied that there has been a contravention in relation thereto of any provision of those regulations: Sch 5 para 4(3). For the avoidance of doubt it is declared that a court may infer for these purposes that there has been a contravention in relation to any vessels or relevant assemblies of any provision of those regulations if it is satisfied that any such provision has been contravened in relation to a vessel or relevant assembly which is representative of those vessels or relevant assemblies as the case may be (whether by reason of being of the same design or part of the same consignment or batch or otherwise): Sch 5 para 4(4). Any person aggrieved by an order so made by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision, in England and Wales, to the Crown Court; and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under the Magistrates' Courts Act 1980 s 111 (statement of case): Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 4(5). Subject to Sch 5 para 4(7), where any vessel or relevant assembly is forfeited under this provision it must be destroyed in accordance with such directions as the court may give: Sch 5 para 4(6). On making an order under this provision a magistrates' court may, however, if it considers it appropriate to do so, direct that the vessels or relevant assemblies to which the order relates are (instead of being destroyed) to be released, to such person as the court may specify, on condition that that person (1) does not supply the vessels or relevant assemblies as the case may be to any person otherwise than: (a) to a person who carries on a business of buying vessels or relevant assemblies of the same description as the first mentioned vessels or relevant assemblies as the case may be and repairing or reconditioning them; or (b) as scrap (that is to say, for the value of materials included in the vessels or relevant assemblies rather than for the value of the vessels or relevant assemblies themselves); and (2) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture: Sch 5 para 4(7).

9 See the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 20; and PARA 882.

10 As to the meaning of 'safe' see PARA 552 note 13.

11 As to the CE marking see PARA 551 note 12.

12 For these purposes, the CE marking is properly affixed to a vessel if (1) it is affixed by the manufacturer or his authorised representative pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 12(2) (see PARA 552 note 5) or by the manufacturer pursuant to reg 14(2) (see PARA 553); and (2) that vessel complies with the requirements of reg 4 (see PARA 552) which apply to it: reg 19(5) (as substituted: see note 4).

13 Notice which is so given must (1) state that the enforcement authority suspects that the CE marking has not been properly affixed to the vessel; (2) specify the respect in which it is so suspected and give particulars thereof; (3) require the person to whom the notice is given: (a) to secure that any vessel to which the notice relates conforms as regards the provisions concerning the proper affixation of the CE marking within such period as may be specified in the notice; or (b) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been properly affixed; and (4) warn that person that if the non-conformity continues after (or if satisfactory evidence has not been provided within) the period specified in the notice, further action may be taken under the 1991 regulations: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 19(4) (as substituted: see note 4).

14     le subject to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 19(3).  
Notwithstanding reg 19(2), for the purposes of ascertaining whether or not the CE marking has been properly affixed, action in Great Britain in relation to vessels for use at work may be taken pursuant to the Health and Safety at Work etc Act 1974 s 20 (see PARA 376) as applied by the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 (see note 8): reg 19(3)(a) (as substituted: see note 4).

15     le pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5.

16     le pursuant to the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 20(1).

17     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 19(2) (as substituted: see note 4).

18     le whether under the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, or otherwise.

19     As to the Secretary of State see PARA 349 et seq.

20     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 6 (amended by SI 1994/3098).

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### (iii) Transportable Pressure Equipment

#### 555. Placing on the market and putting into service of transportable pressure equipment.

Transportable pressure equipment<sup>1</sup> may only be placed on the market or put into service if the following obligations are all satisfied<sup>2</sup>:

- 765 (1) the transportable pressure equipment must meet the requirements of the Dangerous Goods Directive<sup>3</sup> or, if applicable, the requirements of the Transportable Pressure Equipment Directive<sup>4</sup> as to technical provisions for valves and accessories<sup>5</sup>;
- 766 (2) the fact that the equipment satisfies the obligation in head (1) above is demonstrated by the conformity assessment procedures<sup>6</sup> for the placing on the Community market of new transportable pressure equipment<sup>7</sup>;
- 767 (3) that those conformity assessment procedures are carried out by a notified body<sup>8</sup>;
- 768 (4) the marking requirements<sup>9</sup> that are applicable to conformity assessment are complied with in relation to that equipment<sup>10</sup>.

Transportable pressure equipment to which the above provisions apply may be placed on the market or put into service for use in national carriage<sup>11</sup> if the three obligations set out below are all satisfied<sup>12</sup>. Those obligations are that:

- 769 (a) the equipment satisfies the conformity assessment for the placing on the national market of new transportable pressure equipment<sup>13</sup>;
- 770 (b) the assessment is carried out by an approved body<sup>14</sup>;
- 771 (c) the relevant marking requirements<sup>15</sup> that are applicable to conformity assessment are complied with<sup>16</sup>.

Transportable pressure equipment<sup>17</sup> may be reassessed for conformity<sup>18</sup>.

1 'Transportable pressure equipment' means:

127 (1) all receptacles (cylinders, tubes, pressure drums, cryogenic receptacles, bundles of cylinders as defined in EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) Annex A);

128 (2) all tanks, including demountable tanks, tank containers (mobile tanks), tanks of tank wagons, tanks or receptacles of battery vehicles or battery wagons, tanks of tank vehicles,

used for the transport of Class 2 gases in accordance with the Annexes to EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) and EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) and for the transport of certain dangerous substances of other classes indicated in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annex VI, including their valves and other accessories used for transport; but the definition excludes equipment subject to the general exemption principles applicable to small quantities and to the special cases provided for in EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) Annex and EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) Annex as well as aerosol dispensers (UN number 1950) and gas cylinders for breathing

appliances: EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) concerning the approximation of the laws of the member states relating to common provision for transportable pressure equipment and methods for inspection (the 'Transportable Pressure Equipment Directive') art 2(1); definition applied by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(1), (4).

For these purposes, 'tank' means a shell, including its service and structural equipment, and when used alone, the term 'tank' means a tank-container, portable tank, demountable tank or fixed tank as defined in ADR or RID, including tanks forming elements of battery-vehicles or MEGCs (multiple element gas containers) as so defined; 'aerosol' or 'aerosol dispenser' means any non-refillable receptacle meeting the requirements of ADR or RID, made of metal, glass or plastics and containing a gas, compressed, liquefied or dissolved under pressure, with or without a liquid, paste or powder, and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state or in a gaseous state; 'UN number' means the four-figure identification number of the substance or article taken from the UN Model Regulations; 'cylinder' means a transportable pressure receptacle of a water capacity not exceeding 150 litres; and 'pressure receptacle' is a collective term that includes cylinders, tubes, pressure drums, closed cryogenic receptacles and bundles of cylinders: ADR s 1.2.1; RID s 1.2.1; definitions applied by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3).

Note that EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) and EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) have been repealed by European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13) on the inland transport of dangerous goods. A reference in the Transportable Pressure Equipment Directive to either of the repealed Directives is to be treated as a reference to the Dangerous Goods Directive (ie European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13) on the inland transport of dangerous goods as amended from time to time); and a reference to EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) Annex and EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) Annex is to be treated as a reference to ADR and RID (respectively): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(5). 'ADR' means (except for the purpose of reg 14(6)(b): see **CARRIAGE AND CARRIERS**) Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road, as revised or reissued from time to time; but to the extent that a reference in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, to ADR is a reference to ADR as it applied for the purposes of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (the '2007 regulations'), it has the same meaning as in reg 2 Table of those regulations: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(5). 'RID' means (except for the purpose of reg 14(6)(b): see **CARRIAGE AND CARRIERS**) the Annex to the Regulation concerning the international carriage of dangerous goods by rail which forms Appendix C to COTIF, as revised or reissued from time to time; but to the extent that a reference in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, to RID is a reference to RID as it applied for the purposes of the 2007 regulations, it has the same meaning as in the 2007 regulations reg 2 Table: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(5). 'COTIF' means the Convention concerning International Carriage by Rail, as revised or reissued from time to time: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(5). For the purposes of those regulations, (a) the scope of ADR and RID is deemed to include national as well as international carriage; (b) a member state of the European Communities which is not a contracting party to ADR is deemed to be a contracting party to ADR; and (c) a member state of the European Communities which is not a member state of COTIF is deemed to be a member state of COTIF: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 3(a)-(c). As to the meaning of 'national carriage' see note 11. See further **CARRIAGE AND CARRIERS**.

2 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(2). Regulation 19 applies to transportable pressure equipment within the scope of the Transportable Pressure Equipment Directive by virtue of art 1(2)(a), ie to new transportable pressure equipment as defined in art 2: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(1). The 2009 regulations came into force on 1 July 2009: see reg 1. As to the general application of those regulations see reg 4 and as to exemptions see Pt 3 (regs 11-18); as to requirements relating to the carriage of dangerous goods by road or rail see Pt 2 (regs 5-10), Sch 1; as to requirements relating to radiological emergencies during carriage of class 7 goods see Pt 5 (reg 24), Sch 2; and see **CARRIAGE AND CARRIERS**. The provisions relating to transportable pressure equipment are contained in Pt 4 (regs 19-23). 'Dangerous goods' has the same meaning as in ADR s 1.2.1 or RID s 1.2.1, ie those substances and articles the carriage of which is prohibited by ADR or RID respectively, or authorised only under the conditions prescribed therein: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3). The enforcing authorities for the 2009 regulations are (1) the Health and Safety Executive in relation to road and rail; (2) the Secretary of State for Transport in relation to road and inland waterways; and (3) the chief officer of police of each area in relation to road: reg 32(1). However, the Health and Safety Executive is not the enforcing authority in relation to rail to the extent that the Office of Rail Regulation is the enforcing authority pursuant to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 32(2). The Secretary of State for

Transport is the only enforcing authority to the extent that the 2009 regulations require compliance with the security provisions: reg 32(3), (4). 'Security provisions' means the prohibitions and requirements of ADR Ch 1.10 (including those requirements deemed to be part of ADR in consequence of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, regs 7, 8): reg 2(2), (5). As to the Health and Safety Executive see PARA 361 et seq and as to the Secretary of State see PARA 349 et seq.

3 le the requirements of European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13).

4 le the requirements of EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 3(4).

5 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(3).

6 'Conformity assessment procedures' means those procedures set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annex IV Pt I: art 2(3); definition applied by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(4).

7 le the conformity assessment procedures mentioned in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 3(1), (2): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(4).

8 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(5). 'Notified body' means an inspection body designated by the national competent authority of a member state in accordance with EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 8 and meeting the criteria of Annexes I and II: art 2(5); definition applied by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(4). The competent authority in Great Britain for the purposes of the 2009 regulations is determined in accordance with reg 25(2)-(5): reg 25(1). For these purposes the competent authority is the Secretary of State for Transport: see reg 25(5). The GB competent authority may appoint a person to carry out a function of the GB competent authority under the 2009 regulations and a reference in those regulations to the performance of the function by the GB competent authority is to be treated as including a reference to the performance of the function by the person appointed: reg 25(6). The person may be appointed to carry out the function in particular circumstances or generally: reg 25(7). 'GB competent authority' means the competent authority in Great Britain for the purposes of the 2009 regulations as determined under reg 25: reg 2(5). For the purposes of the 2009 regulations, a reference in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annex IV Pt I to 'national authorities' is to be treated as if it were a reference to 'competent authority': Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(7). As to the meaning of 'Great Britain' see PARA 305 note 7.

The GB competent authority is to perform those functions that are identified in ADR and RID as being the functions of a competent authority: reg 26. Where a person has asked the GB competent authority to perform a function which is, by virtue of reg 26, a function of the GB competent authority, a fee may be charged for, or in connection with, the performance of the function by, or on behalf of, the GB competent authority: reg 27(1), (2). Any fee charged must be reasonable for the work performed or to be performed: reg 27(3).

In respect of equipment which under the 2009 regulations may not be used in connection with the carriage of dangerous goods unless it has been approved for that use, the GB competent authority may appoint such persons as it thinks fit to determine whether the equipment should be approved and, if so, to approve that equipment for use: reg 29(1), (2). Where it is a function of the GB competent authority, by virtue of reg 26, to approve or authorise a body or expert to carry out, witness, supervise or decide to waive an inspection, examination, test or approval in respect of equipment used in connection with the carriage of dangerous goods, that function is to be performed by the appointment of a person pursuant to reg 29(2): reg 29(3). In respect of the appointment of a person to carry out the functions of a notified body for the purposes of Pt 4, the GB competent authority may not appoint a person pursuant to reg 29(2) unless that person satisfies the criteria set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annexes I and II: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 29(4). In relation to a function mentioned in reg 29(3), Sch 3 para 1(2), (3) (see below) applies instead of reg 27(2), (3) in respect of the fee which may be charged: reg 27(4). For transitional provisions see reg 30.

An application for appointment as a notified body or an approved body must be made in a manner approved by the GB competent authority: reg 29(6), Sch 3 para 1(1). A fee may be charged for, or in connection with, the consideration by, or on behalf of, the GB competent authority of an application for appointment: Sch 3 para 1(2). Any fee charged must be reasonable for the work performed or to be performed: Sch 3 para 1(3). The GB competent authority must make any appointment in writing: Sch 3 para 2(1). An appointment may be made subject to such conditions as the GB competent authority considers appropriate and, in particular, those conditions may (1) restrict the scope of the appointment to equipment of a particular description; (2) require markings of a particular description to be affixed to equipment by or on behalf of the appointee in connection with the giving, or the refusal to give, approval; and (3) apply upon or following termination of the appointment: Sch 3 para 2(2). An appointment may be for the time being or for such period as may be specified in the appointment: Sch 3 para 2(3). If for any reason an appointment is terminated, the GB competent authority may

(a) give such directions to the person whose appointment has been terminated or to another person who has been appointed pursuant to the 2009 regulations, for the purpose of making such arrangements for the determination of outstanding applications as it considers appropriate and the person to whom the directions are given must comply with them; and (b) authorise another person to take over the functions of the appointee whose appointment has been terminated in respect of such cases as it may specify: Sch 3 para 2(4). An appointee may charge a fee for, or in connection with, the carrying out of a function for which the appointment has been made: Sch 3 para 3(1). The fee must not exceed (i) the costs incurred or to be incurred by the appointee in performing the function; and (ii) an amount on account of profit which is reasonable in the circumstances having regard to the character and extent of the work done or to be done by the appointee and the commercial rate normally charged on account of profit for that work or similar work: Sch 3 para 3(2). An appointee is to be subject to such inspection by or on behalf of the GB competent authority as is necessary to ensure compliance with any condition specified in the appointment: Sch 3 para 4(1). The inspection may include the examination of premises, equipment and documents and the appointee must provide such copies, facilities, assistance and information as are reasonably required for the purpose of the inspection: Sch 3 para 4(2). A fee which is reasonable for the work performed, or to be performed, is to be payable by the appointee in respect of any such inspection undertaken by or on behalf of the GB competent authority: Sch 3 para 4(3).

9     le the marking requirements set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 10.

10    Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 19(6).

11    'National carriage' means carriage that includes carriage in Great Britain and does not include carriage outside the United Kingdom: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(5). As to the meaning of 'United Kingdom' see PARA 305 note 8.

12    Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 20(1).

13    le the conformity assessment referred to in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 4(4): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 20(2).

14    Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 20(3). 'Approved body' means an inspection body designated by the national competent authority of a member state in accordance with EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 9 and meeting the criteria of Annexes I and III: art 2(6); definition applied by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(4). In respect of the appointment of a person to carry out the functions of an approved body for the purposes of Pt 4, the GB competent authority may not appoint a person pursuant to reg 29(2) unless that person satisfies the criteria set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annexes I and III: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 29(5).

15    le the marking requirements set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 10 as read with art 4(2).

16    Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 20(4).

17    The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 21 applies to transportable pressure equipment within the scope of EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) by virtue of art 1(2)(b), ie to existing transportable pressure equipment as defined in art 2 which meets the technical requirements laid down in EC Council Directive 94/55 (OJ L319, 12.12.1994, p 7) and EC Council Directive 96/49 (OJ L235, 17.09.1996, p 25) (now European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13)): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 21(1).

18    Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 21(2). The equipment is to be (1) reassessed by a notified body in accordance with the procedure set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annex IV Pt II; and (2) marked in accordance with the requirements of art 10 that are applicable to the reassessment of conformity: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 21(3). However, if the equipment has been manufactured in series to a design type which has been reassessed by a notified body in accordance with head (1) above, the procedure set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) Annex IV Pt II may be undertaken by an approved body and references in that Part to 'notified body' are to be treated as references to 'approved body': Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 21(4).



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### **556. Periodic inspection and repeated use.**

If transportable pressure equipment<sup>1</sup> bears a specified marking<sup>2</sup>, it is to be subject to periodic inspection in accordance with the requirements<sup>3</sup> of the Transportable Pressure Equipment Directive<sup>4</sup>. The marking requirements applicable to periodic inspections<sup>5</sup> are to be complied with in relation to the equipment<sup>6</sup>.

1 As to the meaning of 'transportable pressure equipment' see PARA 555 note 1. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 22 applies to transportable pressure equipment within the scope of EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) by virtue of art 1(2)(c), ie to the transportable pressure equipment referred to in art 1(2)(a), (b) (see PARA 555 notes 2, 17) and to existing gas cylinders bearing the conformity marking laid down in EC Council Directive 84/525 (OJ L300, 19.11.1984, p 1), EC Council Directive 84/526 (OJ L300, 19.11.1984, p 20) and EC Council Directive 84/527 (OJ L300, 19.11.1984, p 48): Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 22(1).

2 Ie a marking referred to in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 10(1) or (2) or the marking for gas cylinders referred to in art 1(2)(c) second indent (see note 1).

3 Ie the requirements of EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 6(1). Periodic inspections of tanks are permitted in the manner described in the art 6(1) second para: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 22(3).

4 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 22(2).

5 Ie the marking requirements set out in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 10.

6 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 22(4).



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**557. Misleading and other markings.**

No person is to affix a marking on transportable pressure equipment<sup>1</sup> which is likely to mislead third parties with regard to the meaning or the graphics of the conformity mark<sup>2</sup>. Any other marking may be affixed to transportable pressure equipment provided that the visibility and legibility of the conformity mark is not reduced<sup>3</sup>.

1 As to the meaning of 'transportable pressure equipment' see PARA 555 note 1.

2 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 23(1). 'Conformity mark' means the mark referred to in EC Council Directive 1999/36 (OJ L138, 01.06.1999, p 20) art 10(1), the form of the mark being set out in Annex VII: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(1), (5).

3 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 23(2).

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## (iv) Pressure Equipment and Assemblies

### 558. Application of the Pressure Equipment Regulations 1999.

Subject to certain exclusions<sup>1</sup>, the safety of pressure equipment<sup>2</sup> and assemblies<sup>3</sup> with a maximum allowable pressure (PS)<sup>4</sup> greater than 0.5 bar placed on the market<sup>5</sup> on or after 29 November 1999<sup>6</sup> is governed by the Pressure Equipment Regulations 1999<sup>7</sup>. Those regulations do not, however, apply to the assembly of pressure equipment on the site and under the responsibility of the user<sup>8</sup>.

1 See the Pressure Equipment Regulations 1999, SI 1999/2001, regs 4-6, Sch 1; notes 2, 7; and the text and note 8.

2 For these purposes, (1) 'pressure equipment' means vessels, piping, safety accessories and pressure accessories; where applicable, pressure equipment includes elements attached to pressurised parts, such as flanges, nozzles, couplings, supports, lifting lugs, and similar; (2) 'vessel' means a housing designed and built to contain fluids under pressure including its direct attachments up to the coupling point connecting it to other equipment; a vessel may be composed of more than one chamber; (3) 'fluid' means gases, liquids and vapours in pure phase as well as mixtures thereof; a fluid may contain a suspension of solids; (4) 'pressure' means pressure relative to atmospheric pressure being gauge pressure; vacuum is designated by a negative value; (5) 'piping' means piping components intended for the transport of fluids when connected together for integration into a pressure system, such components include in particular a pipe or system of pipes, tubing, fittings, expansion joints, hoses, other pressure-bearing components as appropriate or heat exchangers consisting of pipes for the purpose of cooling or heating air; (6) 'safety accessories' means devices designed to protect pressure equipment against the allowable limits being exceeded; such devices include (a) devices for direct pressure limitation, such as safety valves, bursting disc safety devices, buckling rods, and controlled safety pressure relief systems; and (b) limiting devices, which either activate the means for correction or provide for shutdown or shutdown and lockout, such as pressure switches or temperature switches or fluid level switches and safety related measurement control and regulation devices; and (7) 'pressure accessories' means devices with an operational function and having pressure-bearing housings: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2). The 1999 regulations do not, however, apply to the products listed in Sch 1: reg 4(1). Regulation 4(1), Sch 1 (amended by SI 2008/1597 as from 29 December 2009) excludes the following products:

- 129 (i) pipelines comprising piping or a system of piping designed for the conveyance of any fluid or substance to or from an installation (onshore or offshore) starting from and including the last isolation device located within the confines of the installation, including all the annexed equipment designed specifically for pipelines. This exclusion does not apply to standard pressure equipment such as may be found in pressure reduction stations or compression stations;
- 130 (ii) networks for the supply, distribution and discharge of water and associated equipment and headraces such as penstocks, pressure tunnels, pressure shafts for hydroelectric installations and their related specific accessories;
- 131 (iii) equipment covered by EC Directive 87/404 (OJ L220, 08.08.1987, p 48) on simple pressure vessels;
- 132 (iv) equipment covered by EC Council Directive 75/324 (OJ L147, 09.06.1975, p 40) of 20 May 1975 on the approximation of the laws of the member states relating to aerosol dispensers;
- 133 (v) equipment intended for the functioning of vehicles defined by the following Directives and their Annexes: (A) EC Council Directive 70/156 (OJ L42, 23.02.1970, p 1) of 6 February 1970 on the approximation of the laws of the member states relating to the type-approval of motor vehicles and their trailers; (B) EC Council Directive 74/150 (OJ L84, 28.03.1974, p 10) of 4 March 1974 on the approximation of the laws of the member states relating to the type-approval of

- wheeled agricultural or forestry tractors; (c) EC Council Directive 92/61 (OJ L225, 10.08.1992, p 72) of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles;
- 134 (vi) equipment classified as no higher than category I under the Pressure Equipment Directive (ie European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1) on the approximation of the laws of the member states relating to pressure equipment), art 9 and covered by one of the following Directives: (A) EC Council Directive 98/37 (OJ L207, 23.07.1998, p 1) on the approximation of the laws of the member states relating to machinery (entry revoked as from 29 December 2009 by SI 2008/1597 and replaced by the following: European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) of 17 May 2006 on machinery); (B) European Parliament and EC Council Directive 95/16 (OJ L213, 07.09.1995, p 1) of 29 June 1995 on the approximation of the laws of the member states relating to lifts; (c) EC Council Directive 73/23 (OJ L77, 26.03.1973, p 29) of 19 February 1973 on the harmonisation of the laws of the member states relating to electrical equipment designed for use within certain voltage limits; (D) EC Council Directive 93/42 (OJ L169, 12.07.1993, p 1) of 14 June 1993 concerning medical devices; (E) EC Council Directive 90/396 (OJ L196, 26.07.1990, p 15) of 29 June 1990 on the approximation of the laws of the member states relating to appliances burning gaseous fuels; (F) European Parliament and EC Council Directive 94/9 (OJ L100, 19.04.1994, p 1) of 23 March 1994 on the approximation of the laws of the member states concerning equipment and protective systems intended for use in potentially explosive atmospheres;
  - 135 (vii) equipment covered by the EC Treaty art 296(1)(b) (production of or trade in arms, munitions and war material; as to citation of the EC Treaty see PARA 340 note 1);
  - 136 (viii) items specifically designed for nuclear use, failure of which may cause an emission of radioactivity;
  - 137 (ix) well-control equipment used in the petroleum, gas or geothermal exploration and extraction industry and in underground storage which is intended to contain and/or control well pressure, that is to say the wellhead ('Christmas tree'), the blow out preventers ('BOP'), the piping manifolds and all their equipment upstream;
  - 138 (x) equipment comprising casings or machinery where the dimensioning, choice of material and manufacturing rules are based primarily on requirements for sufficient strength, rigidity and stability to meet the static and dynamic operational effects or other operational characteristics and for which pressure is not a significant design factor, such equipment may include (A) engines including turbines and internal combustion engines; (B) steam engines, gas/steam turbines, turbo-generators, compressors, pumps and actuating devices;
  - 139 (xi) blast furnaces including the furnace cooling system, hot-blast recuperators, dust extractors and blast-furnace exhaust-gas scrubbers and direct reducing cupolas, including the furnace cooling, gas converters and pans for melting, re-melting, de-gassing and casting of steel and non-ferrous metals;
  - 140 (xii) enclosures for high-voltage electrical equipment such as switchgear, control gear, transformers, and rotating machines;
  - 141 (xiii) pressurised pipes for the containment of transmission systems, for example electrical power and telephone cables;
  - 142 (xiv) ships, rockets, aircraft and mobile off-shore units, as well as equipment specifically intended for installation on board or the propulsion thereof;
  - 143 (xv) pressure equipment consisting of a flexible casing, for example tyres, air cushions, balls used for play, inflatable craft, and other similar pressure equipment;
  - 144 (xvi) exhaust and inlet silencers;
  - 145 (xvii) bottles or cans for carbonated drinks for final consumption;
  - 146 (xviii) vessels designed for the transport and distribution of drinks having a PS.V of not more than 500 bar-L and a maximum allowable pressure not exceeding 7 bar;
  - 147 (xix) equipment covered by the ADR, the RID, the IMDG and the ICAO Convention (see further **CARRIAGE AND CARRIERS**);
  - 148 (xx) radiators and pipes in warm water heating systems;

149 (xxi) vessels designed to contain liquids with a gas pressure above the liquid of not more than 0.5 bar.

3 'Assembly' means several pieces of pressure equipment assembled by a manufacturer to constitute an integrated and functional whole: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2).

4 'Maximum allowable pressure' or 'PS' means the maximum pressure for which the equipment is designed, as specified by the manufacturer, defined at a location specified by the manufacturer, being the location of connection of protective or limiting devices or the top of equipment or, if either of the foregoing are not appropriate, any point specified by the manufacturer: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2).

5 For these purposes, an item of pressure equipment or an assembly which is made available for the first time in the European Economic Area ('EEA') whether for reward or free of charge is not to be regarded as having been placed on the market where (1) it has been manufactured within the EEA or imported from a country or territory outside the EEA; and (2) prior to its being made so available it has been used otherwise than in the course of business at all times since its manufacture or import: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), (4) (reg 2(4) added by SI 2002/1267). 'Business' includes a profession and an undertaking: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

As from 29 December 2009, for these purposes, an item of pressure equipment or an assembly which is made available for the first time in the EEA, whether for reward or free of charge, is not to be regarded as having been placed on the market if, prior to its being made so available, it has been used otherwise than in the course of business at all times since its manufacture or import: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), (4) (prospectively substituted by SI 2008/1597).

6 See the Pressure Equipment Regulations 1999, SI 1999/2001, reg 5.

7 Pressure Equipment Regulations 1999, SI 1999/2001, reg 3. Subject to reg 6(2), the 1999 regulations do not apply to pressure equipment and assemblies placed on the market on or before 29 May 2002 which comply with any provisions with which they would have been required to comply for them to be placed on the market in the United Kingdom on 28 November 1999: reg 6(1). This exclusion does not, however, apply in the case of pressure equipment or an assembly which (1) unless required to bear the CE marking pursuant to any other Community obligation, bears the CE marking or an inscription liable to be confused with it; or (2) bears or is accompanied by any other indication, howsoever expressed, that it complies with the Pressure Equipment Directive: Pressure Equipment Regulations 1999, SI 1999/2001, reg 6(2). As to the CE marking see PARA 560.

8 Pressure Equipment Regulations 1999, SI 1999/2001, reg 4(2).

## UPDATE

### 558 Application of the Pressure Equipment Regulations 1999

NOTE 2--Directive 87/404 replaced: European Parliament and EC Council Directive 2009/105 (OJ L264, 8.10.2009, p 12).

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### 559. General duties with regard to pressure equipment and assemblies.

Subject to certain exceptions<sup>1</sup>, no person who is a responsible person<sup>2</sup> may place on the market<sup>3</sup> or put into service<sup>4</sup>:

- 772 (1) any specified pressure equipment<sup>5</sup> unless the statutory requirements<sup>6</sup> have been complied with in relation to it<sup>7</sup>; and any technical documentation or other information in relation to an item of pressure equipment required to be retained under the conformity assessment procedure used must be retained by the person specified in that respect in that conformity assessment procedure for any period specified in that procedure<sup>8</sup>;
- 773 (2) a specified assembly<sup>9</sup> unless the statutory requirements<sup>10</sup> have been complied with in relation to it<sup>11</sup>; and any technical documentation or other information in relation to an assembly required to be retained under the conformity assessment procedure used must be retained by the person specified in that respect in that conformity assessment procedure for any period specified in that procedure<sup>12</sup>;
- 774 (3) any pressure equipment or assembly to which the relevant regulations<sup>13</sup> apply below or equal to the specified limits<sup>14</sup> unless the following requirements have been complied with in relation to it<sup>15</sup>:

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- 202. (a) it is designed and manufactured in accordance with sound engineering practice in order to ensure safe use;
- 203. (b) it is accompanied by adequate instructions for use;
- 204. (c) it bears markings (other than the CE marking)<sup>16</sup> to permit identification of the manufacturer or of his authorised representative established within the European Economic Area ('EEA')<sup>17</sup>; and
- 205. (d) it is safe<sup>18</sup>.

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Subject to the above-mentioned exceptions<sup>19</sup>, no person who is not a responsible person may supply<sup>20</sup> any pressure equipment or assembly unless that pressure equipment or assembly is safe<sup>21</sup>.

1. Subject to the Pressure Equipment Regulations 1999, SI 1999/2001, reg 11: regs 7(1), 8(1), 9(1). For the purposes of reg 7, 8, 9, or 10 (see the text and notes 2-10), pressure equipment or an assembly is not be regarded as being placed on the market or supplied, as the case may be, (1) where that pressure equipment or assembly (a) will be put into service in a country outside the EEA; or (b) is imported into the EEA for re-export to a country outside the EEA, save that this provision does not apply if the CE marking, or any inscription liable to be confused therewith, is affixed thereto; or (2) by the exhibition at trade fairs and exhibitions of that pressure equipment or assembly, in respect of which the provisions of the 1999 regulations are not satisfied, if (a) a notice is displayed in relation to the pressure equipment or assembly in question to the effect (i) that it does not satisfy those provisions; and (ii) that it may not be placed on the market or supplied until those provisions are satisfied by the manufacturer of the pressure equipment or assembly or his authorised representative established within the EEA; and (b) appropriate safety measures are taken when demonstrating such pressure equipment or assembly to ensure the safety of persons: regs 2(1)(b), 11 (reg 2(1)(b) substituted by SI 2008/1597 as from 29 December 2009). As to the meaning of 'pressure equipment' see PARA 558 note 2; and as

to the meaning of 'assembly' see PARA 558 note 3. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

2 'Responsible person' means (1) the manufacturer or his authorised representative established within the EEA; or (2) where neither the manufacturer nor his authorised representative is established within the EEA, the person who places the pressure equipment or assembly on the market or puts it into service as the case may be: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), (2) (reg 2(1)(b) as substituted: see note 1).

3 As to placing on the market see PARA 558 note 5.

4 For the purposes of the 1999 regulations, pressure equipment or assemblies are not to be regarded as having been put into service where a person (1) being a manufacturer of pressure equipment or an assembly for his own use; or (2) having imported pressure equipment or an assembly from a country or territory outside the EEA for his own use, puts that pressure equipment or assembly into service otherwise than in the course of business: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), (3) (reg 2(1)(b) as substituted: see note 1). As to the meaning of 'business' see PARA 558 note 5.

5 (1) Any pressure equipment described in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(2): reg 7(1). For these purposes, the following are pressure equipment: (1) vessels, except those referred to in head (2) below, for (a) gases, liquefied gases, gases dissolved under pressure, vapours and also those liquids whose vapour pressure at the maximum allowable temperature is greater than 0.5 bar above normal atmospheric pressure, (1,013 mbar) within the following limits: (i) for fluids in Group 1, with a volume greater than 1L and a product of PS and V greater than 25 bar-L, or with a pressure PS greater than 200 bar; (ii) for fluids in Group 2, with a volume greater than 1L and a product of PS and V greater than 50 bar-L, or with a pressure PS greater than 1,000 bar, and all portable extinguishers and bottles for breathing apparatus; (b) liquids having a vapour pressure at the maximum allowable temperature of not more than 0.5 bar above normal atmospheric pressure (1,013 mbar) within the following limits: (i) for fluids in Group 1, with a volume greater than 1L and a product of PS and V greater than 200 bar-L, or with a pressure PS greater than 500 bar; for fluids in Group 2, with a pressure PS greater than 10 bar and a product of PS and V greater than 10,000 bar-L, or with a pressure PS greater than 1,000 bar; (2) fired or otherwise heated pressure equipment with the risk of overheating intended for generation of steam or super-heated water at temperatures higher than 110 degrees C having a volume greater than 2L, and all pressure cookers; (3) piping intended for (a) gases, liquefied gases, gases dissolved under pressure, vapours and those liquids whose vapour pressure at the maximum allowable temperature is greater than 0.5 bar above normal atmospheric pressure (1,013 mbar) within the following limits: (i) for fluids in Group 1, with a DN greater than 25; (ii) for fluids in Group 2, with a DN greater than 32 and a product of PS and DN greater than 1,000 bar; (b) liquids having a vapour pressure at the maximum allowable temperature of not more than 0.5 bar above normal atmospheric pressure (1,013 mbar), within the following limits: (i) for fluids in Group 1, with a DN greater than 25 and a product of PS and DN greater than 2,000 bar; (ii) for fluids in Group 2, with a PS greater than 10 bar, a DN greater than 200 and a product of PS and DN greater than 5,000 bar; (4) subject to reg 9, safety and pressure accessories intended for equipment covered by heads (1)-(3) above, including where such equipment is incorporated into an assembly: reg 7(2).

'Fluid in Group 1' means a fluid being a dangerous fluid, that is to say a substance or preparation covered by EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, art 2(2) as specified in art 2(2) as explosive, extremely flammable, highly flammable, flammable (where the maximum allowable temperature is above flashpoint), very toxic, toxic, or oxidising; and 'fluid in Group 2' means a fluid which is not a fluid in Group 1: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2). 'Nominal size' or 'DN' means a numerical designation of size which is common to all components in a piping system other than components indicated by outside diameters or by thread size; ie a convenient round number for reference purposes which is only loosely related to manufacturing dimensions and designated by the letters 'DN' followed by a number: reg 2(2). 'Volume' or 'V' means the internal volume of a chamber, including the volume of nozzles to the first connection or weld and excluding the volume of permanent internal parts: reg 2(2). 'Maximum or minimum allowable temperature' or 'TS' means the maximum or minimum temperatures, as the case may be, for which the equipment is designed, as specified by the manufacturer: reg 2(2). As to the meanings of 'fluid' and 'piping' see PARA 558 note 2.

6 (1) The requirements of the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(3). The requirements in respect of pressure equipment described reg 7(2) (see note 5) are that (1) it satisfies the relevant essential requirements and for the purpose of satisfying those requirements where a transposed harmonised standard covers one or more of the relevant essential requirements, any pressure equipment constructed in accordance with that transposed harmonised standard is to be presumed to comply with that or, as the case may be, those essential requirements; (2) subject to reg 15, the appropriate conformity assessment procedure in respect of the pressure equipment has been carried out in accordance with reg 13(1); (3) subject to reg 22, the CE marking has been affixed to it by the manufacturer of the pressure equipment or his authorised representative established within the EEA in accordance with reg 16, Sch 5 (see PARA 560); (4) a declaration of conformity has been drawn up in respect of it by the manufacturer of the pressure equipment or

his authorised representative established within the EEA containing the information listed in Sch 6 (see PARA 560); and (5) it is in fact safe: regs 2(1)(b), 7(3) (reg 2(1)(b) as substituted: see note 1). 'Safe' in relation to pressure equipment or an assembly, means that the pressure equipment or assembly when properly installed and maintained and used for its intended purpose is not liable to endanger the health or safety of persons and, where appropriate, domestic animals or property, and, where the context admits, cognate expressions are to be construed accordingly: reg 2(2). 'Standard' means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory and, for the avoidance of doubt, includes a harmonised standard or a transposed harmonised standard; 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation or the European Committee for Electrotechnical Standardisation or both, upon a mandate from the European Commission in accordance with European Parliament and EC Council Directive 98/34 (OJ L204, 21.07.1998, p 37) of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, and of which the reference number is published in the Official Journal of the European Community; and 'transposed harmonised standard' means a national standard of an EEA state which transposes a harmonised standard: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), (2) (reg 2(1)(b) as substituted: see note 1).

'Essential requirements' means the requirements set out in Sch 2; and 'relevant essential requirements' in relation to pressure equipment or an assembly, means those provisions of the essential requirements which are applicable to that particular pressure equipment or assembly, as the case may be: reg 2(2). Schedule 2 sets out the Pressure Equipment Directive (ie European Parliament and Council Directive 97/23 (OJ L181, 09.07.1997, p 1) on the approximation of the laws of the member states relating to pressure equipment, Annex I. The obligations arising from the essential requirements listed therein for pressure equipment also apply to assemblies where the corresponding hazard exists: Pressure Equipment Regulations 1999, SI 1999/2001, Sch 2 para 1. The essential requirements laid down in the Directive are compulsory. The obligations laid down in the essential requirements apply only if the corresponding hazard exists for the pressure equipment in question when it is used under conditions which are reasonably foreseeable by the manufacturer: Sch 2 para 2. The manufacturer is under an obligation to analyse the hazards in order to identify those which apply to his equipment on account of pressure; he must then design and construct it taking account of his analysis: Sch 2 para 3. The essential requirements are to be interpreted and applied in such a way as to take account of the state of the art and current practice at the time of design and manufacture as well as of technical and economic considerations which are consistent with a high degree of health and safety protection: Sch 2 para 4. The essential requirements are grouped under the following headings: (a) general; (b) design (including design for adequate strength, provisions to ensure safe handling and operation, means of examination, means of draining and venting, corrosion or other chemical attack, wear, assemblies, provisions for filling and discharge, protection against exceeding the allowable limits of pressure equipment, safety accessories and external fire); (c) manufacturing (including manufacturing procedures, final assessment, marking and labelling, operating instructions; and in respect of pressure equipment or an assembly to be placed on the market and put into service in the United Kingdom, where these requirements are to be met, the marking, labelling, information and instructions must be in English (regs 7(5), 8(5)); (d) materials. Schedule 2 also sets out specific pressure equipment requirements relating to fired or otherwise heated pressure equipment with a risk of overheating and to certain types of piping and specific quantitative requirements for certain pressure equipment. Schedule 2 is not set out in detail in this work.

For the purposes of reg 7(3)(b) (see head (2) above), the appropriate conformity assessment procedure for pressure equipment is one of the procedures set out in Sch 4 as determined in accordance with reg 12, Sch 3 (classification of pressure equipment), reg 13(3) (applicable modules): see reg 13(1). The manufacturer must apply either one of the conformity assessment procedures which may be chosen from among those laid down in reg 13(3) for the category in which the pressure equipment is classified or one of the procedures which apply to a higher category of pressure equipment, if available: reg 13(2). Regulations 13, 14 (see note 10) do not apply to an item of pressure equipment or an assembly the use of which is in the interests of experimentation; and for these purposes, 'experimentation' means pressure equipment or an assembly designed or adapted for the purpose only of conducting any test or measurement in relation to that pressure equipment or assembly: reg 15(1), (2).

The Sch 4 conformity assessment procedures are set out in the following modules: Module A (internal production control); Module A1 (internal manufacturing checks with monitoring of the final assessment); Module B (EC type-examination); Module B1 (EC design-examination); Module C1 (conformity to type); Module D (production quality assurance); Module D1 (production quality assurance); Module E (product quality assurance); Module E1 (product quality assurance); Module F (product verification); Module G (EC unit verification); Module H (full quality assurance); Module H1 (full quality assurance with design examination and special surveillance of the final assessment). Schedule 4 is not set out in full in this work.

7 Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(1).

8 Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(4).

9 ie an assembly described in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 8(2): reg 8(1). For these purposes, an assembly is (1) an assembly which includes at least one item of pressure equipment

described in reg 7(2) (see note 5) and (a) is intended for generating steam or superheated water at a temperature higher than 110 degrees C comprising at least one item of fired or otherwise heated pressure equipment presenting a risk of overheating; or (b) not being a product included in head (a) above, is intended by the manufacturer to be placed on the market and put into service as an assembly; or (2) an assembly which is intended for generating warm water at temperatures not greater than 110 degrees C, which is manually fed with solid fuels and has a PS.V greater than 50 bar-L: reg 8(2).

10    Ie the requirements of the Pressure Equipment Regulations 1999, SI 1999/2001, reg 8(3). The requirements in respect of an assembly described in reg 8(2)(a) (see note 9 head (1)) are that (1) it satisfies the relevant essential requirements and for the purpose of satisfying those requirements where a transposed harmonised standard covers one or more of the relevant essential requirements, any assembly constructed in accordance with that transposed harmonised standard is to be presumed to comply with that or, as the case may be, those essential requirements; (2) subject to reg 15 (see note 6), the appropriate conformity assessment procedure in respect of the assembly has been carried out in accordance with reg 14; (3) subject to reg 22, the CE marking has been affixed to it by the manufacturer of that assembly or his authorised representative established within the EEA in accordance with reg 16, Sch 5; (4) a declaration of conformity has been drawn up in respect of it by the manufacturer of the assembly or his authorised representative established within the EEA containing the information listed in Sch 6 (see PARA 560); and (5) it is in fact safe: regs 2(1)(b), 8(3)(a) (reg 2(1)(b) as substituted: see note 1). The requirements in respect of any assembly described in reg 8(2)(b) (see note 9 head (2)) are that (a) it satisfies the essential requirements referred to in Sch 2 paras 2.10, 2.11, 3.4, 5(a) and 5(d); and (b) it complies with the requirements listed in reg 8(a)(ii)-(v) inclusive (see heads (2)-(5) above): reg 8(3)(b).

For the purposes of reg 8(3)(a)(ii) (see note 2), the relevant conformity assessment procedure to be applied by the manufacturer in respect of the assembly must be a global conformity assessment procedure comprising (i) assessment of each item of pressure equipment making up the assembly and referred to in reg 7(2)(a)-(d) which has not been previously subjected to a conformity assessment procedure and to a separate CE marking; the assessment procedure is to be determined by the category of each item of equipment; (ii) the assessment of the integration of the various components of the assembly as referred to in Sch 2 paras 2.3, 2.8 and 2.9 which must be determined by the highest category applicable to the equipment concerned other than that applicable to any safety accessories; and (iii) the assessment of the protection of an assembly against exceeding the permissible operating limits as referred to in Sch 2 paras 2.10, 3.2.3 must be conducted in the light of the highest category applicable to the items of equipment to be protected: reg 14.

11    Pressure Equipment Regulations 1999, SI 1999/2001, reg 8(1).

12    Pressure Equipment Regulations 1999, SI 1999/2001, reg 8(4).

13    Ie the Pressure Equipment Regulations 1999, SI 1999/2001: see PARA 558; the text and notes 1-12, 14-21; and PARAS 560-561.

14    Ie the limits in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(2)(a), (b) or (c) or reg 8(2): see notes 6, 10.

15    Pressure Equipment Regulations 1999, SI 1999/2001, reg 9(1).

16    For the avoidance of doubt, pressure equipment or assemblies to which the Pressure Equipment Regulations 1999, SI 1999/2001, reg 9 applies are not to bear the CE marking: reg 9(3).

17    See the Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b) (as substituted: see note 1).

18    Pressure Equipment Regulations 1999, SI 1999/2001, reg 9(2).

19    Ie subject to the Pressure Equipment Regulations 1999, SI 1999/2001, reg 11: see note 1.

20    'Supply' includes offering to supply, agreeing to supply, exposing for supply and possessing for supply and cognate expressions are to be construed accordingly: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(2).

21    Pressure Equipment Regulations 1999, SI 1999/2001, reg 10.



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## **560. Conformity with the relevant regulations of pressure equipment and assemblies.**

Any pressure equipment<sup>1</sup> or assembly<sup>2</sup> which bears the CE marking<sup>3</sup> and is accompanied by an EC declaration of conformity<sup>4</sup> is to be taken to conform with all the provisions of the relevant regulations<sup>5</sup> which apply to it, including the appropriate conformity assessment procedure<sup>6</sup>, unless there are reasonable grounds for suspecting that it does not so conform<sup>7</sup>. This does not, however, apply in relation to an enforcement authority<sup>8</sup> where a person fails or refuses to make available to the enforcement authority the documentation of which he is required, by the conformity assessment procedure which applies to that pressure equipment or assembly, to retain a copy<sup>9</sup>.

The affixing of markings on pressure equipment or an assembly which are likely to mislead third parties as to the meaning or form of the CE marking is prohibited<sup>10</sup>. Any other marking may, however, be affixed to pressure equipment or an assembly provided that the visibility and legibility of the CE marking is not thereby reduced<sup>11</sup>.

The Secretary of State<sup>12</sup> may from time to time appoint such persons as he thinks fit to be notified bodies<sup>13</sup> or recognised third-party organisations<sup>14</sup> for the purposes of the relevant regulations<sup>15</sup>. Such a body or organisation has power to charge fees<sup>16</sup>.

The Secretary of State may also from time to time appoint such persons and on such conditions as he thinks fit to be a user inspectorate<sup>17</sup>. The pressure equipment and assembly the conformity of which has been assessed by a user inspectorate are not to bear the CE marking<sup>18</sup>.

European approval for materials<sup>19</sup> must be issued, at the request of one or more manufacturers of materials or equipment, by one of the notified bodies<sup>20</sup> specifically designated for that task and in accordance with the prescribed procedures<sup>21</sup>.

1 As to the meaning of 'pressure equipment' see PARA 558 note 2.

2 As to the meaning of 'assembly' see PARA 558 note 3.

3 Ie in accordance with the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(3)(c) or reg 8(3)(a) (iii): see PARA 559 notes 6, 10. 'CE marking' means the CE marking referred to in reg 16 consisting of the initials 'CE' in the form shown in Sch 5 para 1: reg 2(2). If the CE marking is reduced or enlarged the proportions given in the graduated drawing must be respected: Sch 5 para 2. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm: Sch 5 para 3.

The CE marking must be accompanied by the identification number of the notified body involved at the production control phase: reg 16(1). Subject to reg 16(3), the CE marking must be affixed in a visible, easily legible and indelible fashion to each item of pressure equipment referred to in reg 7, or assembly referred to in reg 8 which is complete or is in a state permitting final assessment as described in Sch 2 para 3.2: reg 16(2). It is not necessary for the CE marking to be affixed to each individual item of pressure equipment making up an assembly as referred to in reg 8 but individual items of pressure equipment already bearing the CE marking when incorporated into the assembly must continue to bear that marking: reg 16(3). Subject to reg 16(5), where the pressure equipment or assembly is subject to other Directives (ie Directives other than European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1)) covering other aspects which provide for the affixing of the CE marking, the latter must indicate that the pressure equipment or assembly in question is also presumed to conform to the provisions of those other Directives: Pressure Equipment Regulations 1999, SI 1999/2001, reg 16(4). Where one or more of those other Directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking must indicate conformity only with

the Directives applied by the manufacturer, and in this case, particulars of the Directives applied, as published in the Official Journal of the European Community, must be given in the documents, notices or instructions required by the Directives and accompanying the pressure equipment or assembly: reg 16(5).

4 In accordance with the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(3)(d) or reg 8(3)(a)(iv): see PARA 559 notes 6, 10. The EC declaration of conformity must contain the following particulars: (1) name and address of the manufacturer or of his authorised representative established within the EEA; (2) description of the pressure equipment or assembly; (3) conformity assessment procedure followed; (4) in the case of assemblies, description of the pressure equipment constituting the assembly, and the conformity assessment procedures followed; (5) where appropriate, name and address of the notified body which carried out the inspection; (6) where appropriate, a reference to the EC type-examination certificate, EC design-examination certificate or EC certificate of conformity; (7) where appropriate, name and address of the notified body monitoring the manufacturer's quality assurance system; (8) where appropriate, the references of the harmonised standards applied; (9) where appropriate, other technical standards and specifications used; (10) where appropriate, the references of the other Community Directives (in addition to the Pressure Equipment Directive (ie European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1)) applied; (11) particulars of the signatory authorised to sign the legally binding declaration for the manufacturer or his authorised representative established within the EEA: Pressure Equipment Regulations 1999, SI 1999/2001, Sch 6. As to the meanings of 'standard' and 'harmonised standard' see PARA 559 note 6; and as to notified bodies see the text and notes 12-15. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

5 In with the provisions of the Pressure Equipment Regulations 1999, SI 1999/2001: see the text and notes 1-4, 6-21; PARAS 558-559, 561.

6 In specified in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 13 or reg 14: see PARA 559 notes 6, 10.

7 Pressure Equipment Regulations 1999, SI 1999/2001, reg 23(1).

8 'Enforcement authority' means, in the case of pressure equipment and assemblies for use in the workplace, in Great Britain, the Health and Safety Executive: reg 2(2). As to the Executive see PARA 361 et seq.

9 Pressure Equipment Regulations 1999, SI 1999/2001, reg 23(2).

10 Pressure Equipment Regulations 1999, SI 1999/2001, reg 16(6).

11 Pressure Equipment Regulations 1999, SI 1999/2001, reg 16(7).

12 As to the Secretary of State see PARA 349 et seq.

13 For these purposes, a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures mentioned or referred to in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 13 or reg 14 (see PARA 559) or to issue a European approval for materials as referred to in reg 17 (see the text and notes 19-21) and which has been (1) appointed as a notified body in the United Kingdom pursuant to reg 20; or (2) appointed by an EEA state other than the United Kingdom, and has been notified by the EEA state concerned to the Commission and the other EEA states pursuant to the Pressure Equipment Directive (ie European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1)) art 12: Pressure Equipment Regulations 1999, SI 1999/2001, regs 2(1)(a)(b), (2), 18 (reg 2(1)(b) substituted by SI 2008/1597 as from 29 December 2009).

14 For these purposes, a recognised third-party organisation is an organisation which has been appointed for the purposes of carrying out the tasks referred to in the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 2 paras 3.1.2 and 3.1.3, and which has been (1) appointed as a recognised third-party organisation in the United Kingdom pursuant to reg 20; or (2) appointed by an EEA state other than the United Kingdom, and has been notified by the EEA state concerned to the Commission and the other EEA states pursuant to the Pressure Equipment Directive (ie European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1)) art 12: Pressure Equipment Regulations 1999, SI 1999/2001, regs 2(1), (2), 19 (reg 2(1)(b) as substituted: see note 13).

15 Pressure Equipment Regulations 1999, SI 1999/2001, reg 20(1). Such an appointment (1) may relate to all descriptions of pressure equipment or assemblies or such descriptions (which may be framed by reference to any circumstances whatsoever) of pressure equipment or assemblies as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment; (3) must, without prejudice to the generality of head (2) above and subject to reg 20(4), require that body to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the manufacturer of the pressure equipment or assemblies or his authorised representative established within the EEA or the importer, as the case may be,

duly fulfils the obligations arising out of the relevant conformity assessment procedure; (4) must be terminated upon 90 days' notice in writing to the Secretary of State at the request of the notified body or recognised third-party organisation; and (5) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with: reg 20(2). Subject to heads (4)-(5) above, such an appointment may be for the time being or for such period as may be specified in the appointment: reg 20(3). A notified body or recognised third-party organisation appointed by the Secretary of State may not be required to carry out the functions referred to in head (3) above if (a) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body; (b) the person making the application has not submitted with his application the amount of the fee which the body requires to be submitted with the application pursuant to reg 21 (see note 16); or (c) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under the 1999 regulations which are outstanding, it will be unable to commence the required work within three months of receiving the application: reg 20(4). If for any reason the appointment of a notified body or recognised third-party organisation is terminated under this regulation, the Secretary of State may (i) give such directions (either to the body the subject of the termination or to another notified body or recognised third-party organisation) for the purpose of making such arrangements for the determination of outstanding applications as he considers appropriate; and (ii) without prejudice to the generality of the foregoing, authorise another notified body or recognised third-party organisation to take over its functions in respect of such cases as he may specify: reg 20(5). Where a notified body is minded to refuse to issue an EC type-examination certificate or EC design-examination certificate it must give notice in writing to the applicant of the reasons why it is minded to do so and give the applicant the opportunity to make representations within a period of 28 days of that notice being given and consider any representations made within that period by the applicant: reg 20(6). In the framework of quality assurance procedures for pressure equipment in categories III and IV referred to in reg 7(2)(a)(i) and (ii)(aa) and (b), the notified body must (A) when performing unexpected visits, take a sample of equipment from the manufacturing or storage premises in order to perform, or have performed, the final assessment as referred to in Sch 2 para 3.2.2 and to this end, the manufacturer must inform the notified body of the intended schedule of production; (B) carry out at least two visits during the first year of manufacturing; and (C) carry out subsequent visits, if any, the frequency of which must be determined by the criteria set out in para 4.4 of the relevant module set out in Sch 4: reg 20(7). In the case of one-off production of vessels and pressure equipment in category III referred to in reg 7(2)(b) under the module H procedure, the notified body must perform or have performed the final assessment, as referred to in Sch 2 para 3.2.2, for each unit and to this end, the manufacturer must communicate the intended schedule of production to the notified body: reg 20(8).

16 Without prejudice to the power of the Secretary of State, where he is appointed as a notified body in the United Kingdom, to charge fees pursuant to regulations made under the Finance Act 1973 s 56 and subject to the following provision, a notified body or recognised third-party organisation appointed by the Secretary of State may charge such fees in connection with, or incidental to, carrying out its duties in relation to the functions referred to in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 20(2)(c) (see note 15 head (3)) as it may determine; provided that such fees may not exceed the sum of the following: (1) the costs incurred or to be incurred by the notified body or recognised third-party organisation in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to (a) the character and extent of the work done or to be done by the body on behalf of the applicant; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 21(1). The power in reg 21(1) includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant: reg 21(2).

17 Pressure Equipment Regulations 1999, SI 1999/2001, reg 22(2). For these purposes, a user inspectorate is a body which has been appointed to carry out one or more of the conformity assessment procedures referred to in regs 13 and 14 and as more specifically defined in reg 22(7) and which has been appointed in the United Kingdom pursuant to reg 22(2) or appointed by an EEA state other than the United Kingdom, and has been notified by the EEA state concerned to the Commission and the other EEA states pursuant to the Pressure Equipment Directive (ie European Parliament and EC Council Directive 97/23 (OJ L181, 09.07.1997, p 1)) art 12: Pressure Equipment Regulations 1999, SI 1999/2001, regs 2(1), 22(1) (reg 2(1) as substituted: see note 13). No body may be appointed under reg 22 unless the Secretary of State is satisfied that the group of which the user inspectorate is part applies a common safety policy as regards the technical specifications for the design, manufacture, inspection, maintenance and use of pressure equipment and assemblies: reg 22(3). Such an appointment (1) may relate to all descriptions of pressure equipment or assemblies or such descriptions (which may be framed by reference to any circumstances whatsoever) of pressure equipment or assemblies as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment; (3) must, without prejudice to the generality of head (2) above, require that body, subject to reg 22(10), to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the manufacturer of the pressure equipment or assemblies or his authorised representative established within the EEA or the importer, as the case may be, duly fulfils the obligations arising out of the relevant conformity assessment procedure; (4) must be terminated upon 90 days' notice in writing to the Secretary of State at the request of the user inspectorate; and (5) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with: reg 22(4). Subject to heads (4)-(5) above, an

appointment under reg 22 may be for the time being or for such period as may be specified in the appointment: reg 22(5). The user inspectorates must act exclusively for the group of which they are part: reg 22(6). The conformity assessment procedures applicable by user inspectorates are modules A1, C1, F and G, as described in Sch 4 and for this purpose references in those modules to 'notified body' are to be read as if they are references to 'user inspectorate': reg 22(7). The pressure equipment and assemblies to which the application relates may be used only in establishments operated by the group of which the user inspectorate is part: reg 22(8). A user inspectorate appointed by the Secretary of State may not be required to carry out the functions referred to in head (3) above if the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body: reg 22(10).

18 Pressure Equipment Regulations 1999, SI 1999/2001, reg 22(9).

19 'European approval for materials' or 'European approval for pressure equipment materials' means a technical document defining the characteristics of materials intended for repeated use in the manufacture of pressure equipment which are not covered by any harmonised standard as referred to in the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 2 para 4.2(b): reg 2(2).

20 Ie the notified bodies referred to in the Pressure Equipment Regulations 1999, SI 1999/2001, reg 18: see note 13.

21 Pressure Equipment Regulations 1999, SI 1999/2001, reg 17. The notified body must determine and perform, or arrange for the performance of, the appropriate inspections and tests to certify the conformity of the types of material with the corresponding requirements of the 1999 regulations, and in the case of materials recognised as being safe to use before 29 November 1999, the notified body must take account of the existing data when certifying such conformity: reg 17, Sch 7 para 1. The notified body may not issue a European approval for materials until it has (1) informed the EEA states and the Commission by sending them the appropriate information; (2) allowed a period of three months to elapse in order that an EEA state or the Commission may refer the matter to the Standing Committee set up by European Parliament and EC Council Directive 98/34 (OJ L204, 21.07.1998, p 37), art 5; (3) taken into account, where appropriate, the opinion of the Committee and the comments submitted: Pressure Equipment Regulations 1999, SI 1999/2001, reg 2(1)(b), Sch 7 para 2 (reg 2(1)(b) as substituted: see note 13). A copy of the European approval for pressure equipment materials must be sent to the EEA states, the notified bodies and the Commission: reg 2(1), Sch 7 para 3 (reg 2(1) as so amended). The materials used for the manufacture of pressure equipment conforming with European approvals for materials, the references of which have been published in the Official Journal of the European Community, are to be presumed to conform to the applicable essential requirements of Sch 2: Sch 7 para 4. The notified body which issued the European approval for pressure equipment materials must withdraw that approval if it finds that it should not have been issued if the type of materials is covered by a harmonised standard and must immediately inform the other EEA states, the notified bodies and the Commission of any withdrawal of an approval: reg 2(1)(b), Sch 7 para 5 (reg 2(1)(b) as substituted: see note 13).

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### **561. Enforcement.**

In Great Britain<sup>1</sup>, in relation to pressure equipment<sup>2</sup> or assemblies<sup>3</sup> for use in the workplace it is the duty of the Health and Safety Executive<sup>4</sup> to make adequate arrangements for the enforcement of the Pressure Equipment Regulations 1999<sup>5</sup>. Where action has been taken by the Executive to prohibit or restrict the placing on the market<sup>6</sup>, the supply<sup>7</sup> or putting into service<sup>8</sup>, whether under the 1999 regulations or otherwise, of any pressure equipment or assembly which bears the CE marking<sup>9</sup>, it must forthwith inform the Secretary of State<sup>10</sup> of the action taken, and the reasons for it, with a view to this information being passed by him to the European Commission<sup>11</sup>.

Contravention of certain provisions of the 1999 regulations is an offence<sup>12</sup>.

Except in the case of pressure equipment or an assembly which, in the opinion of an enforcement authority<sup>13</sup>, is liable to endanger the safety of persons and, where appropriate, domestic animals or property, where an enforcement authority has reasonable grounds for suspecting that the CE marking has been affixed to pressure equipment or an assembly and in relation to which any provision of the 1999 regulations has not been complied with it may serve notice in writing<sup>14</sup> on:

- 775 (1) the manufacturer of the pressure equipment or assembly or his authorised representative established within the European Economic Area ('EEA'); or
- 776 (2) in a case where neither the manufacturer of the pressure equipment or assembly nor his authorised representative established within the EEA has placed the pressure equipment or assembly on the market, the person who places it on the market in the United Kingdom<sup>15</sup>;

and subject to certain exceptions<sup>16</sup>, no other enforcement action<sup>17</sup> may be taken and no proceedings may be brought<sup>18</sup> in respect of that pressure equipment or assembly until such notice has been given and the person to whom it is given has failed to comply with its requirements<sup>19</sup>.

1 As to the meaning of 'Great Britain' see PARA 305 note 7.

2 As to the meaning of 'pressure equipment' see PARA 558 note 2.

3 As to the meaning of 'assembly' see PARA 558 note 3.

4 As to the Health and Safety Executive see PARA 361 et seq.

5 Pressure Equipment Regulations 1999, SI 1999/2001, reg 24(1), Sch 8 para 1(a). Accordingly a reference in the provisions applied for the purposes of such enforcement by Sch 8 para 1(b) to an 'enforcing authority' is to be construed as a reference to the Executive: Sch 8 para 1(a). The Health and Safety at Work etc Act 1974 ss 19-28, 33-35, 38, 39, 41 and 42 apply for the purposes of providing for the enforcement of the 1999 regulations and in respect of proceedings for contravention thereof as if: (1) references to relevant statutory provisions were references to those sections as so applied and to those regulations; (2) references to articles, substances, articles and substances, or plant, were references to pressure equipment or assemblies; (3) references to the field of responsibility of an enforcing authority, however expressed, were omitted; (4) in s 20, s 20(3) was omitted; (5) in s 23, s 23(3), (4) and (6) were omitted; (6) in s 33: (a) in s 33(1) the whole of s 33(1)(a)-(d) was omitted; (b) s 33(1A) was omitted; (c) in s 33(2), the reference to s 33(1)(d) was omitted; (d) s 33(2A) was

omitted; (e) for s 33(3) there was substituted the following: '(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1) (e) above not falling within that subsection shall be liable (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or (b) on conviction on indictment (i) in the case of an offence under subsection (1)(g), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or (ii) in all other cases, to a fine.'; and (f) s 33(4) was omitted; (7) in s 34, (a) s 34(1)(a), (b) was omitted; and (b) in s 34(3) for 'six months' there was substituted '12 months'; and (8) in s 42, s 42(4), (5) was omitted: Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8 para 1(b). The Health and Safety at Work etc Act 1974 ss 36(1), (2), 37 (see PARAS 859-860) apply in relation to offences under s 33 (see PARAS 852-853) as applied by head (6) above: Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8 para 1(c). As to enforcement for private use or consumption see Sch 8 para 2 (amended by SI 2002/1267 and SI 2004/693); and as to forfeiture of pressure equipment or assemblies for private use or consumption see the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8 para 4. As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

6 As to placing on the market see PARA 558 note 5.

7 As to the meaning of 'supply' see PARA 559 note 20.

8 As to putting into service see PARA 559 note 4.

9 As to the CE marking see PARA 560.

10 As to the Secretary of State see PARA 349 et seq.

11 Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8 para 6.

12 See the Pressure Equipment Regulations 1999, SI 1999/2001, reg 25; and PARA 883.

13 As to the meaning of 'enforcement authority' see PARA 560 note 8.

14 A notice which is so given must (1) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the pressure equipment or assembly; (2) specify the respect in which it is so suspected and give particulars thereof; (3) require the person to whom the notice is given (a) to secure that any pressure equipment or assembly to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or (b) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and (4) warn that person that if the non-conformity continues after, or if satisfactory evidence has not been provided within, the period specified in the notice, further action may be taken under the 1999 regulations in respect of that pressure equipment or assembly or pressure equipment or assembly of the same type placed on the market by that person: Pressure Equipment Regulations 1999, SI 1999/2001, reg 24(4).

15 As to the meaning of 'United Kingdom' see PARA 305 note 8. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

16 Ie subject to the Pressure Equipment Regulations 1999, SI 1999/2001, reg 24(3). Notwithstanding the provisions of reg 24(2), for the purposes of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to the Health and Safety at Work etc Act 1974 s 20 (see PARA 376) as it is applied by the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8 (see note 5): reg 24(3).

17 Ie pursuant to the Pressure Equipment Regulations 1999, SI 1999/2001, Sch 8.

18 Ie pursuant to the Pressure Equipment Regulations 1999, SI 1999/2001, reg 25.

19 Pressure Equipment Regulations 1999, SI 1999/2001, reg 24(2).

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Application of the Lifts Regulations 1997.

## **(4) SUPPLY ETC OF LIFTS AND SAFETY COMPONENTS**

### **562. Application of the Lifts Regulations 1997.**

Subject to certain exclusions<sup>1</sup>, the safety of lifts<sup>2</sup> permanently serving buildings or constructions and safety components<sup>3</sup> for use in such lifts, where such lifts or components are placed on the market<sup>4</sup> and put into service on or after 1 July 1997<sup>5</sup>, is governed by the Lifts Regulations 1997<sup>6</sup>. Nothing in those regulations, however, precludes the placing on the market of any component, other than a safety component, which is intended to be incorporated into a lift to which the regulations apply and in respect of which a declaration is made by the manufacturer of that component or his authorised representative established in the European Economic Area ('EEA') that the component is intended for such incorporation<sup>7</sup>.

The 1997 regulations do not apply to the following lifts or to safety components for them:

- 777 (1) cableways, including funicular railways, for the public or private transportation of persons;
- 778 (2) lifts specially designed and constructed for military or police purposes;
- 779 (3) mine winding gear;
- 780 (4) theatre elevators;
- 781 (5) lifts fitted in means of transport;
- 782 (6) lifts connected to machinery and intended exclusively for access to the workplace;
- 783 (7) rack and pinion trains;
- 784 (8) construction-site hoists intended for lifting persons or persons and goods<sup>8</sup>.

<sup>1</sup> ie subject to the Lifts Regulations 1997, SI 1997/831, regs 4-7, Sch 14: see the text and notes 2-8.

<sup>2</sup> For these purposes, 'lift' means an appliance serving specific levels, having a car moving (1) along guides which are rigid; or (2) along a fixed course even where it does not move along guides which are rigid (eg a scissor lift), and inclined at an angle of more than 15 degrees to the horizontal and intended for the transport of (a) persons; (b) persons and goods; (c) goods alone if the car is accessible, ie, a person may enter it without difficulty, and fitted with controls situated inside the car or within reach of a person inside: Lifts Regulations 1997, SI 1997/831, reg 2(2). As from 29 December 2009, 'lift' means a lifting appliance (i) serving specific levels; (ii) having a carrier moving along guides which are rigid and inclined at an angle of more than 15 degrees to the horizontal; and (iii) intended for the transport of (A) persons; (B) persons and goods; or (C) goods alone, if the carrier is accessible, that is to say a person may enter it without difficulty, and fitted with controls situated inside the carrier or within reach of a person inside the carrier; but lifting appliances moving along a fixed course even where they do not move along guides which are rigid are to be considered as lifts falling within the scope of the Lifts Regulations 1997, SI 1997/831: reg 2(2) (definition substituted by SI 2008/1597 as from 29 December 2009). 'Carrier' means a part of a lift by which persons or goods are transported in order to be lifted or lowered: Lifts Regulations 1997, SI 1997/831, reg 2(2) (definition added by SI 2008/1597 as from 29 December 2009).

<sup>3</sup> For these purposes, 'safety component' means a component listed in the Lifts Regulations 1997, SI 1997/831, Sch 4: Lifts Regulations 1997, SI 1997/831, reg 2(2). Those components are (1) devices for locking landing doors; (2) devices to prevent falls referred to in the Lifts Directive (ie European Parliament and EC Council Directive 95/16 (OJ L213, 07.09.1995, p 1)) on the approximation of the laws of the member states relating to lifts, Annex I s 3.2, to prevent the car from falling or unchecked upward movements; (3) overspeed limitation devices; (4) energy-accumulating buffers, either non-linear or with damping of the return movement; and energy-dissipating buffers; (5) safety devices fitted to jacks of hydraulic power circuits where these are

used as devices to prevent falls; (6) electric safety devices in the form of safety switches containing electronic components: Lifts Regulations 1997, SI 1997/831, reg 2(1)(a), Sch 4 paras 1-6.

4 'Placing on the market of the lift', except in the definition of 'responsible person' (see PARA 563 note 2) and for the purposes of the Lifts Regulations 1997, SI 1997/831, regs 9(3), 14 and 19 (see PARAS 563, 566), occurs when the installer first makes the lift available to the user; and 'installer of a lift' means the natural or legal person who takes responsibility for the design, manufacture, installation and placing on the market of the lift and who affixes the CE marking and draws up the EC declaration of conformity (see PARA 565): reg 2(2).

5 The Lifts Regulations 1997, SI 1997/831, do not apply to any lift or safety component which was placed on the market and put into service before 1 July 1997: reg 5. Subject to reg 6(2), the 1997 regulations do not apply to a lift or safety component placed on the market and put into service on or before 30 June 1999 which complies with any health and safety provisions with which it would have been required to comply for it to be placed on the market and put into service in the United Kingdom on 29 June 1995: reg 6(1). The exclusion provided in reg 6(1) does not apply in the case of a lift or a safety component which (1) unless required to bear the CE marking pursuant to any other Community obligation, bears the CE marking or an inscription liable to be confused with it; or (2) bears or is accompanied by any other indication, howsoever expressed, that it complies with the Lifts Directive: Lifts Regulations 1997, SI 1997/831, reg 6(2).

6 Lifts Regulations 1997, SI 1997/831, reg 3(1). The requirements of the 1997 regulations do not apply to a lift in so far as and to the extent that the relevant essential health and safety requirements relate to risks wholly or partly covered by other Community directives (ie directives other than the Lifts Directive) applicable to that lift: Lifts Regulations 1997, SI 1997/831, reg 7. As to the meaning of 'relevant essential health and safety requirements' see PARA 563 note 4. Nothing in the 1997 regulations with regard to the installation of a lift affects the application of the Construction Products Regulations 1991, SI 1991/1620 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 754-755): Lifts Regulations 1997, SI 1997/831, reg 3(3).

7 Lifts Regulations 1997, SI 1997/831, regs 2(1), 3(2). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

8 Lifts Regulations 1997, SI 1997/831, reg 4, Sch 14. As from 29 December 2009, Sch 14 is substituted by SI 2008/1597 and the list of excluded lifts and safety components is as follows:

- 150 (1) lifting appliances whose speed is not greater than 0.15m/s;
- 151 (2) construction site hoists;
- 152 (3) cableways, including funicular railways;
- 153 (4) lifts specially designed and constructed for military or police purposes;
- 154 (5) lifting appliances from which work can be carried out;
- 155 (6) mine winding gear;
- 156 (7) lifting appliances intended for lifting performers during artistic performances;
- 157 (8) lifting appliances fitted in means of transport;
- 158 (9) lifting appliances connected to machinery and intended exclusively for access to workstations including maintenance and inspection points on the machinery;
- 159 (10) rack and pinion trains;
- 160 (11) escalators and mechanical walkways.



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General duties with regard to lifts and safety components.

### **563. General duties with regard to lifts and safety components.**

Subject to certain exceptions<sup>1</sup>, no person who is a responsible person<sup>2</sup> may place on the market<sup>3</sup> and put into service:

- 785 (1) any lift, unless the prescribed requirements<sup>4</sup> have been complied with in relation to it<sup>5</sup>;
- 786 (2) any safety component, unless the prescribed requirements<sup>6</sup> have been complied with in relation to it<sup>7</sup>.

Any technical documentation or other information in relation to a lift or a safety component required to be retained under the conformity assessment procedure used must be retained by the person specified in that respect in that conformity assessment procedure for any period specified in that procedure<sup>8</sup>.

Subject to the same exceptions<sup>9</sup>, it is the duty of any person who supplies<sup>10</sup> any lift or safety component but who is not a person to whom the above provisions apply to ensure that that lift or safety component, as the case may be, is safe<sup>11</sup>.

Where in the case of a lift or a safety component, any of the above requirements to be fulfilled by the installer of the lift or the manufacturer of the safety component or, in the case of the latter, his authorised representative established in the EEA, have not been so fulfilled such requirements may be fulfilled by the person who places that lift or safety component on the market<sup>12</sup>.

1 le subject to the Lifts Regulations 1997, SI 1997/831, reg 12: see note 3.

2 For these purposes, 'responsible person' means (1) in the case of a lift, the installer of the lift; (2) in the case of a safety component, the manufacturer of the safety component or his authorised representative established in the EEA; or (3) where neither the installer of the lift nor the manufacturer of the safety component nor the latter's authorised representative established in the EEA, as the case may be, have fulfilled the requirements of the Lifts Regulations 1997, SI 1997/831, reg 8(2) or reg 9(2) applicable to the lift or safety component (see notes 4, 6), the person who places the lift or the safety component on the market: reg 2(1)(b), (2) (reg 2(1)(b) substituted as from 29 December 2009 by SI 2008/1597). Where a person (a) being the manufacturer of a lift or a safety component for his own use puts that lift or safety component, as the case may be, into service; or (b) having imported a lift or a safety component from a country or territory outside the EEA puts that lift or safety component, as the case may be, into service, for these purposes that person is a responsible person and is deemed to have placed that lift or safety component on the market: Lifts Regulations 1997, SI 1997/831, reg 2(3). 'Manufacturer of the safety components' means the natural or legal person who takes responsibility for the design and manufacture of the safety components and who affixes the CE marking and draws up the EC declaration of conformity (see PARA 565): reg 2(2). As to the meaning of 'installer of a lift' see PARA 562 note 4; and as to the meanings of 'lift' and 'safety component' see PARA 562 notes 2-3. As to the application of the 1997 regulations see PARA 562. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

3 For the purposes of the Lifts Regulations 1997, SI 1997/831, reg 8, reg 9 or reg 10, a lift or a safety component is not to be regarded as being placed on the market or supplied (1) where that lift or safety component (a) will be put into service in a country outside the EEA; or (b) is imported into the EEA for re-export to a country outside the EEA, save that this does not apply if the CE marking (see PARA 565), or any inscription liable to be confused therewith, is affixed thereto or, in the case of a safety component, to its label; or (2) by the exhibition at trade fairs and exhibitions of that lift or safety component, in respect of which the provisions of the 1997 regulations are not satisfied, if (a) a notice is displayed in relation to the lift or safety component in

question to the effect (i) that it does not satisfy those provisions; and (ii) that it may not be placed on the market or supplied until those provisions are satisfied, in the case of a lift, by the installer of the lift and, in the case of a safety component, by the manufacturer of the safety component or his authorised representative established in the EEA; and (b) adequate safety measures are taken to ensure the safety of persons: regs 2(1)(b), 12 (reg 2(1)(b) as substituted: see note 2).

4 The requirements of the Lifts Regulations 1997, SI 1997/831, reg 8(2). The requirements in respect of any lift are that (1) it satisfies the relevant essential health and safety requirements and for the purpose of satisfying those requirements (a) where a transposed harmonised standard covers one or more of the relevant essential health and safety requirements, any lift constructed in accordance with that transposed harmonised standard is to be presumed to comply with that or, as the case may be, those essential health and safety requirements; and (b) by calculation or on the basis of design plans, it is permitted to demonstrate the similarity of a range of equipment to satisfy the essential safety requirements; (2) the appropriate conformity assessment procedure in respect of the lift has been carried out in accordance with reg 13(1); (3) the CE marking has been affixed to it by the installer of the lift in accordance with Sch 3 (see PARA 565); (4) a declaration of conformity has been drawn up in respect of it by the installer of the lift containing the information listed in Sch 2 Pt B, taking account of the specifications given in the Schedule used for the conformity assessment procedure; and (5) it is in fact safe: reg 8(2). 'Standard' or 'standard referred to in article 5' means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory; and, for the avoidance of doubt, this definition includes a harmonised standard or a transposed harmonised standard; 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation or the European Committee for Electrotechnical Standardisation or both, upon a mandate from the Commission in accordance with EC Council Directive 83/189 (OJ L109, 26.04.1983, p 08) of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, and of which the reference number is published in the Official Journal of the European Community; and 'transposed harmonised standard' means a national standard of an EEA state which transposes a harmonised standard: Lifts Regulations 1997, SI 1997/831, reg 2(1)(b), (2) (reg 2(1)(b) as substituted: see note 2). 'Safe' in relation to a lift or safety component, means that the lift or, in the case of a safety component, the lift in which it is to be installed, when properly installed and maintained and used for its intended purpose is not liable to endanger the health or safety of persons or, where appropriate, the safety of property, and cognate expressions are to be construed accordingly: reg 2(2).

'Essential health and safety requirements' means the requirements set out in Sch 1; and 'relevant essential health and safety requirements' in relation to a lift or safety component means those provisions of the essential health and safety requirements which are applicable to that particular lift or safety component, as the case may be: reg 2(2). Schedule 1 (amended by virtue of SI 2005/831) sets out the Lifts Directive (ie European Parliament and EC Council Directive 95/16 (OJ L213, 07.09.1995, p 1) on the approximation of the laws of the member states relating to lifts), Annex I. Obligations under the essential health and safety requirements apply only where the lift or safety component is subject to the hazard in question when used as intended by the installer of the lift or the manufacturer of the safety components: Lifts Regulations 1997, SI 1997/831, Sch 1 para 1. The essential health and safety requirements contained in the Directive are imperatives. However, given the present state of the art, the objectives which they lay down may not be attainable. In such cases, and to the greatest extent possible, the lift or safety components must be designed and built in such a way as to approximate to those objectives: Sch 1 para 2. The safety-component manufacturer and the installer of the lift are under an obligation to assess the hazards in order to identify all those which apply to their products; they must then design and construct them taking account of the assessment: Sch 1 para 3. The essential requirements laid down in EC Council Directive 89/106 (OJ L40, 11.02.1989, p 12) on the approximation of laws, regulations and administrative provisions of the member states relating to construction products, not included in the Lifts Directive, apply to lifts: Lifts Regulations 1997, SI 1997/831, Sch 1 para 4. The essential health and safety requirements are grouped under the following headings: general; hazards to persons outside the car; hazards to persons in the car; other hazards; marking; and instructions for use. Schedule 1 is not set out in detail in this work. As from 29 December 2009, Sch 1 (amended by SI 2008/1597) sets out European Parliament and EC Council Directive 2006/42 (OJ L157, 9.6.2006, p 24) of 17 May 2006 on machinery, Annex I.

The appropriate conformity assessment procedure, in the case of a lift, is one of the following procedures: Lifts Regulations 1997, SI 1997/831, reg 13(1)(a). Those procedures are (i) if the lift was designed in accordance with a lift having undergone an EC type-examination as referred to in Sch 5, it must be constructed, installed and tested by implementing (A) the final inspection referred to in Sch 6; (B) the quality assurance system referred to in Sch 11; or (C) the quality assurance system referred to in Sch 13, and the procedures for the design and construction stages, on the one hand, and the installation and testing stages, on the other, may be carried out on the same lift; (ii) if the lift was designed in accordance with a model lift having undergone an EC type-examination as referred to in Sch 5, it must be constructed, installed and tested by implementing (A) the final inspection referred to in Sch 6; (B) the quality assurance system referred to in Sch 11; or (C) the quality assurance system referred to in Sch 13, and all permitted variations between a model lift and the lifts forming part of the lifts derived from that model lift must be clearly specified (with maximum and minimum values) in the technical dossier required as part of the appropriate conformity assessment procedure; (iii) if the lift was designed in accordance with a lift for which a quality assurance system pursuant to Sch 12 was implemented, supplemented by an examination of the design if the latter is not wholly in accordance with the harmonised standards, it must be installed and constructed and tested by implementing, in addition (A) the final inspection

referred to in Sch 6; (b) the quality assurance system in accordance with Sch 11; or (c) the quality assurance system in accordance with Sch 13; (iv) the unit verification procedure, referred to in Sch 9, by a notified body; or (v) the quality assurance system in accordance with Sch 12, supplemented by an examination of the design if the latter is not wholly in accordance with the transposed harmonised standards: reg 13(2). The provisions of the relevant Schedules are not set out in detail in this work. 'Model lift' means a representative lift whose technical dossier shows the way in which the essential safety requirements will be met for lifts which conform to the model lift defined by objective parameters and which uses identical safety components: reg 2(2). As to notified bodies see PARA 565.

5 Lifts Regulations 1997, SI 1997/831, reg 8(1).

6 In the requirements of the Lifts Regulations 1997, SI 1997/831, reg 9(2): reg 9(1). The requirements in respect of any safety component are that (1) it satisfies the relevant essential health and safety requirements and for the purpose of satisfying those requirements where a transposed harmonised standard covers one or more of the relevant essential health and safety requirements, any safety component constructed in accordance with that transposed harmonised standard is presumed to be suitable to enable a lift on which it is correctly installed to comply with that or, as the case may be, those essential health and safety requirements; (2) subject to reg 9(3), the appropriate conformity assessment procedure in respect of the safety component has been carried out in accordance with reg 13(1); (3) the CE marking (see PARA 565) has been affixed to it, or on a label inseparably attached to the safety component, by the manufacturer of that safety component or his authorised representative established in the EEA in accordance with Sch 3; (4) a declaration of conformity has been drawn up in respect of it by the manufacturer of the safety component or his authorised representative established in the EEA containing the information listed in Sch 2 Pt A (see PARA 565), taking account of specifications given in that Schedule used for the conformity assessment procedure; and (5) it is in fact safe: regs 2(1), 9(2).

The appropriate conformity assessment procedure is, in the case of a safety component, one of the following procedures: reg 13(1)(b). Those procedures are (a) to submit the model of the safety component for EC type-examination in accordance with Sch 5 and for production checks by a notified body in accordance with Sch 10; (b) to submit the model of the safety component for EC type-examination in accordance with Sch 5 and operate a quality assurance system in accordance with Sch 7 for checking production; or (c) to operate a full quality assurance system in accordance with Sch 8: reg 13(3). The provisions of the relevant Schedules are not set out in detail in this work.

7 Lifts Regulations 1997, SI 1997/831, reg 9(1).

8 Lifts Regulations 1997, SI 1997/831, regs 8(3), 9(3).

9 In subject to the Lifts Regulations 1997, SI 1997/831, reg 12: see note 1.

10 'Supply' includes offering to supply, agreeing to supply, exposing for supply and possessing for supply and cognate expressions are to be construed accordingly: Lifts Regulations 1997, SI 1997/831, reg 2(2).

11 Lifts Regulations 1997, SI 1997/831, reg 10.

12 Lifts Regulations 1997, SI 1997/831, regs 2(1)(b), 14(1) (reg 2(1)(b) as substituted: see note 2). Nothing in reg 14 affects the power of an enforcement authority to take action under Pt IV (regs 19-24) (see PARA 566) in respect of the installer of the lift, the manufacturer of the safety component or, in the case of the latter, his authorised representative established in the EEA in respect of a contravention of or a failure to comply with any of those requirements: regs 2(2), 14(2). 'Enforcement authority' means, in the case of a lift and a safety component for use in the workplace, in Great Britain, the Health and Safety Executive: reg 2(2). As to the Health and Safety Executive see PARA 361 et seq; and as to the meaning of 'Great Britain' see PARA 305 note 7.

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Specific duties relating to the supply of information, freedom from obstruction of lift shafts and retention of documents.

**564. Specific duties relating to the supply of information, freedom from obstruction of lift shafts and retention of documents.**

The person responsible for work on the building or construction where a lift<sup>1</sup> is to be installed and the installer of the lift<sup>2</sup> must keep each other informed of the facts necessary for, and take the appropriate steps to ensure, the proper operation and safe<sup>3</sup> use of the lift<sup>4</sup>.

Where, in the case of a lift, the appropriate conformity assessment procedure<sup>5</sup> is one of the specified procedures<sup>6</sup> the person responsible for the design of the lift must supply to the person responsible for the construction, installation and testing all necessary documents and information for the latter person to be able to operate in absolute security<sup>7</sup>.

A copy of the declaration of conformity<sup>8</sup> must:

787 (1) in the case of a lift, be supplied to the European Commission, the EEA states and any other notified bodies<sup>9</sup>, on request, by the installer of the lift together with a copy of the reports of the tests involved in the final inspection to be carried out as part of the appropriate conformity assessment procedure<sup>10</sup>; and

788 (2) be retained, by the person who draws up that declaration, for a period of ten years:

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206. (a) in the case of a lift, from the date on which the lift was placed on the market<sup>11</sup>; and

207. (b) in the case of a safety component<sup>12</sup>, from the date on which safety components of that type were last manufactured by that person<sup>13</sup>.

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Where in the case of a lift or a safety component, any of the above requirements to be fulfilled by the installer of the lift or the manufacturer of the safety component or, in the case of the latter, his authorised representative established in the EEA, have not been so fulfilled such requirements may be fulfilled by the person who places that lift or safety component on the market<sup>14</sup>.

1 As to the meaning of 'lift' see PARA 562 note 2.

2 As to the meaning of 'installer of a lift' see PARA 562 note 4.

3 As to the meaning of 'safe' see PARA 563 note 4.

4 Lifts Regulations 1997, SI 1997/831, reg 11(1). In particular it must be ensured that shafts intended for lifts do not contain any piping or wiring or fittings other than that necessary for the operation and safety of that lift: reg 11(1).

5 Ie for the purposes of the Lifts Regulations 1997, SI 1997/831, reg 8(2)(b): see PARA 563 note 4.

6 Ie one of the procedures set out in the Lifts Regulations 1997, SI 1997/831, reg 13(2)(a), (b) or (c): see PARA 563 note 4.

7 Lifts Regulations 1997, SI 1997/831, reg 11(2).

8     le the declaration of conformity referred to in the Lifts Regulations 1997, SI 1997/831, reg 8(2)(d) or reg 9(2)(d): see PARA 563 notes 4, 6, PARA 565 note 5.

9     See PARA 565.

10    le the procedure referred to in the Lifts Regulations 1997, SI 1997/831, reg 8(2)(b): see PARA 563 note 4.

11    As to placing on the market see PARA 562 note 4.

12    As to the meaning of 'safety component' see PARA 562 note 3.

13    Lifts Regulations 1997, SI 1997/831, reg 11(3).

14    Lifts Regulations 1997, SI 1997/831, regs 2(1)(b), 14(1) (reg 2(1)(b) substituted as from 29 December 2009 by SI 2008/1597). As to the effect of the Lifts Regulations 1997, SI 1997/831, reg 14 on enforcement see reg 14(2), cited in PARA 563 note 12.

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Conformity with the safety requirements.

### **565. Conformity with the safety requirements.**

Subject to the following provision, a lift<sup>1</sup> or safety component<sup>2</sup> which:

- 789 (1) bears the CE marking<sup>3</sup> or, in the case of a safety component, the label attached to which bears that marking<sup>4</sup>; and
- 790 (2) is accompanied by an EC declaration of conformity<sup>5</sup>,

is to be taken to conform with all the provisions of the Lifts Regulations 1997<sup>6</sup> which apply to it, including the appropriate conformity assessment procedure<sup>7</sup> unless there are reasonable grounds for suspecting that it does not so conform<sup>8</sup>. This does not, however, apply in relation to an enforcement authority<sup>9</sup> where a person fails or refuses to make available to the enforcement authority the documentation which he is required, by the conformity assessment procedure which applies to that lift or safety component, to retain or a copy of it<sup>10</sup>.

The affixing on the lifts or safety components of markings which are likely to mislead third parties as to the meaning and form of the CE marking is prohibited<sup>11</sup>. Any other marking may, however, be affixed to the lift or safety component, provided that the visibility and legibility of the CE marking are not thereby reduced<sup>12</sup>.

The Secretary of State<sup>13</sup> may from time to time appoint such persons as he thinks fit to be notified bodies<sup>14</sup> for the purposes of the 1997 regulations<sup>15</sup>. Such bodies have statutory power to charge fees in certain circumstances<sup>16</sup>.

1 As to the meaning of 'lift' see PARA 562 note 2.

2 As to the meaning of 'safety component' see PARA 562 note 3.

3 'CE marking' or 'CE conformity marking' means a marking consisting of the initials 'CE' in the form shown in the Lifts Regulations 1997, SI 1997/831, Sch 3: reg 2(2), Sch 3 para 1. If the CE marking is reduced or enlarged, the proportions given in the drawing shown must be respected: Sch 3 para 2. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm. This minimum dimension may be waived for small-scale safety components: Sch 3 para 3. The CE marking must be followed by the identification number of the notified body that deals with the relevant procedures; it must be affixed to every lift car distinctly and visibly and on each of the safety components or, where that is not possible, on a label inseparably attached to the safety component: see Sch 3 paras 4, 5. Where a lift or safety component is the subject of other Community directives (ie other than the Lifts Directive: see note 14) concerning other aspects and which also provide for the affixing of the CE marking, such marking must indicate that the lift or safety component is also presumed to conform to the provisions of those other directives: Sch 3 para 6. Where one or more of the other Community directives so referred to allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking must indicate conformity only to the directives applied by the installer of the lift or the manufacturer of the safety component. In these case, particulars of the directives applied, as published in the Official Journal of the European Community, must be given in the documents, notices or instructions required by the directives and accompanying such lift or safety component: Sch 3 para 7.

4 Ie in accordance with the Lifts Regulations 1997, SI 1997/831, reg 8(2)(c) or reg 9(2)(c): see PARA 563 notes 4, 6.

5 Ie in accordance with the Lifts Regulations 1997, SI 1997/831, reg 8(2)(d) or reg 9(2)(d): see PARA 563 notes 4, 6. The EC declaration of conformity for safety components must contain the following information: (1) name and address of the manufacturer of the safety components; (2) where appropriate, name and address of

his authorised representative established in the EEA (ie business name, full address; in the case of an authorised representative, the business name and address of the manufacturer of the safety component must also be indicated); (3) description of the safety component, details of type or series and serial number (if any); (4) safety function of the safety component, if not obvious from the description; (5) year of manufacture of the safety component; (6) all relevant provisions with which the safety component complies; (7) where appropriate, reference to harmonised standards used; (8) where appropriate, name, address and identification number of the notified body which carried out the EC type-examination; (9) where appropriate, reference to the EC type-examination certificate issued by that notified body; (10) where appropriate, name, address and identification number of the notified body which carried out the production checks; (11) where appropriate, name, address and identification number of the notified body which checked the system of quality assurance implemented by the manufacturer; and (12) identification of the signatory empowered to act on behalf of the manufacturer of the safety components or his authorised representative established in the EEA: see reg 2(1)(b), Sch 2 Pt A (reg 2(1)(b) substituted as from 29 December 2009 by SI 2008/1597). The declaration must be drafted in the same language as the instruction manual and be either typewritten or printed: Lifts Regulations 1997, SI 1997/831, Sch 2 Pt A note 1. As to the meaning of 'safety component' see PARA 562 note 3; and as to the meaning of 'manufacturer of the safety components' see PARA 563 note 2. As to the meaning of 'harmonised standard' see PARA 563 note 4. As to notified bodies see PARA 565. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

The EC declaration of conformity for installed lifts must contain the following information: (a) name and address of the installer of the lift (ie business name and full address); (b) description of the lift, details of the type or series, serial number and address where the lift is fitted; (c) year of installation of the lift; (d) all relevant provisions to which the lift conforms; (e) where appropriate, reference to harmonised standards used; (f) where appropriate, name, address and identification number of the notified body which carried out the EC type-examination of the model of the lift; (g) where appropriate, reference of the EC type-examination certificate; (h) where appropriate, name, address and identification number of the notified body which carried out the verification of the lift; (i) where appropriate, name, address and identification number of the notified body which carried out the final inspection of the lift; (j) where appropriate, name, address, and identification number of the notified body which inspected the quality assurance system implemented by the installer; and (k) identification of the signatory having been empowered to act on behalf of the lift installer: see Sch 2 Pt B. The declaration must be drafted in the same language as the instruction manual and be either typewritten or printed: Sch 2 Pt B note 3.

6     Ie the Lifts Regulations 1997, SI 1997/831: see PARAS 562-564; the text and notes 1-5, 7-16; and PARA 566.

7     Ie the procedure specified in the Lifts Regulations 1997, SI 1997/831, reg 13: see PARA 563 notes 4, 6.

8     Lifts Regulations 1997, SI 1997/831, reg 18(1).

9     As to the meaning of 'enforcement authority' see PARA 563 note 12.

10    Lifts Regulations 1997, SI 1997/831, reg 18(2).

11    Lifts Regulations 1997, SI 1997/831, Sch 3 para 8.

12    Lifts Regulations 1997, SI 1997/831, Sch 3 para 8.

13    As to the Secretary of State see PARA 349 et seq.

14    For these purposes, a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures mentioned and referred to in the Lifts Regulations 1997, SI 1997/831, reg 13 which has been (1) appointed as a notified body in the United Kingdom pursuant to reg 16 (see note 15); or (2) appointed by an EEA state other than the United Kingdom, and has been notified by the EEA state concerned to the European Commission and the other EEA states pursuant to the Lifts Directive (ie European Parliament and EC Council Directive 95/16 (OJ L213, 07.09.1995, p 1)) art 9(1): Lifts Regulations 1997, SI 1997/831, reg 15.

15    Lifts Regulations 1997, SI 1997/831, reg 16(1). Such an appointment (1) may relate to all descriptions of lifts or safety components or such descriptions (which may be framed by reference to any circumstances whatsoever) of lifts or safety components as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment; (3) must, without prejudice to the generality of head (2) above, require that body, subject to reg 16(4), to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the installer of the lift or manufacturer of the safety component or such other responsible person, as the case may be, duly fulfils the obligations arising out of the relevant conformity assessment procedure; (4) must be terminated upon 90 days' notice in writing to the Secretary of State, at the request of the notified body; and (5) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with: reg 16(2). Subject to heads (4)-(5) above, an appointment under reg 16 may be for the time being or for such period as may be specified in the appointment: reg 16(3). A

notified body appointed by the Secretary of State is not to be required to carry out the functions referred to in head (3) above if (a) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body; (b) the person making the application has not submitted with its application the amount of the fee which the body requires to be submitted with the application pursuant to reg 17 (see note 16); or (c) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under the 1997 regulations which are outstanding, it will be unable to commence the required work within three months of receiving the application: reg 16(4). If for any reason the appointment of a notified body is terminated under reg 16, the Secretary of State may (i) give such directions (either to the body the subject of the termination or to another notified body) for the purpose of making such arrangements for the determination of outstanding applications as he considers appropriate; and (ii) without prejudice to the generality of the foregoing, authorise another notified body to take over its functions in respect of such cases as he may specify: reg 16(5). Where a notified body is minded to refuse to issue an EC type-examination certificate, it must (A) give notice in writing to the applicant of the reasons why it is minded to do so; and (B) give the applicant the opportunity to make representations within a period of 28 days of that notice being given and consider any representations made within that period by the applicant: reg 16(6).

16 Without prejudice to the power of the Secretary of State, where he is appointed as a notified body in the United Kingdom, to charge fees pursuant to regulations made under the Finance Act 1973 s 56, and subject to the following provision, a notified body appointed by the Secretary of State may charge such fees in connection with, or incidental to, carrying out its duties in relation to the functions referred to in reg 16(2)(c) (see note 15 head (3)) as it may determine; provided that such fees may not exceed the sum of the following: (1) the costs incurred or to be incurred by the notified body in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to (a) the character and extent of the work done or to be done by the body on behalf of the applicant; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 17(1). The power in reg 17(1) includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant: reg 17(2).



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## **566. Enforcement.**

In Great Britain<sup>1</sup> in relation to relevant products<sup>2</sup> for use in the workplace, it is the duty of the Health and Safety Executive<sup>3</sup> to make adequate arrangements for the enforcement of the Lifts Regulations 1997<sup>4</sup>. Where action has been taken by an enforcement authority<sup>5</sup> to prohibit or restrict the placing on the market<sup>6</sup>, the supply<sup>7</sup> or putting into service of any relevant product which bears the CE marking<sup>8</sup>, that authority must forthwith inform the Secretary of State<sup>9</sup> of the action taken, and the reasons for it, with a view to this information being passed by him to the European Commission<sup>10</sup>.

Contravention of certain provisions of the 1997 regulations is an offence<sup>11</sup>.

Except in the case of a lift or safety component which, in the opinion of an enforcement authority, is liable to endanger the safety of persons and, where appropriate, of property, where an enforcement authority has reasonable grounds for suspecting that the CE marking has been affixed to a lift or safety component or, in the case of a safety component, to a label inseparably attached to it and in relation to which any provision of the 1997 regulations has not been complied with, that authority may serve notice in writing<sup>12</sup> on:

- 791 (1) the installer of the lift<sup>13</sup> or the manufacturer of the safety component<sup>14</sup> or, in the case of the latter, his authorised representative established in the European Economic Area ('EEA'); or
- 792 (2) in a case where neither the installer of the lift nor the manufacturer of the safety component nor, in the case of the latter, his authorised representative established in the EEA has placed the lift or safety component, as the case may be, on the market, the person who places it on the market in the United Kingdom;

and no other enforcement action may be taken<sup>15</sup>, and no proceedings may be brought<sup>16</sup>, in respect of that lift or safety component until such notice has been given and the person to whom it is given has failed to comply with its requirements<sup>17</sup>.

1 As to the meaning of 'Great Britain' see PARA 305 note 7.

2 For these purposes, 'relevant product' means a lift or safety component, as the case may be, to which the Lifts Regulations 1997, SI 1997/831, apply: reg 19(1), Sch 15 para 8. As to the application of the 1997 regulations see PARA 562; and as to the meanings of 'lift' and 'safety component' see PARA 562 notes 2-3.

3 As to the Health and Safety Executive see PARA 361 et seq.

4 Lifts Regulations 1997, SI 1997/831, Sch 15 para 1(a). Accordingly a reference in the provisions applied for the purposes of such enforcement by Sch 15 para 1(b) below to an 'enforcing authority' is to be construed as a reference to the Executive: Sch 15 para 1(a). The Health and Safety at Work etc Act 1974 ss 19-28, 33-35, 38, 39, 41 and 42 apply for the purposes of providing for the enforcement of the 1997 regulations and in respect of proceedings for contravention thereof as if (1) references to relevant statutory provisions were references to those sections as so applied and to those regulations; (2) references to articles, substances, articles and substances, or plant, were references to relevant products; (3) references to the field of responsibility of an enforcing authority, however expressed, were omitted; (4) in s 20, s 20(3) were omitted; (5) in s 23, s 23(3), (4) and (6) were omitted; (6) in s 33: (a) in s 33(1) the whole s 33(1)(a)-(d) were omitted; (b) s 33(1A) were omitted; (c) in s 33(2), the reference to s 33(1)(d) were omitted; (d) s 33(2A) were omitted; (e) for s 33(3) there were substituted the following: '(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1)(e) above not falling within that

subsection shall be liable (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or (b) on conviction on indictment (i) in the case of an offence under subsection (1)(g), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or (ii) in all other cases, to a fine.'; and (f) s 33(4) were omitted; (7) in s 34: (a) s 34(1)(a), (b) were omitted; and (b) in s 34(3) for 'six months' there were substituted '12 months'; and (8) in s 42, s 42(4), (5) were omitted: Lifts Regulations 1997, SI 1997/831, Sch 15 para 1(b). The Health and Safety at Work etc Act 1974 ss 36(1), (2), 37 (see PARAS 859-860) apply in relation to offences under s 33 (see PARAS 852-853) as applied by head (6) above: Lifts Regulations 1997, SI 1997/831, Sch 15 para 1(c). As to enforcement where the relevant products are for private use or consumption see Sch 15 para 2.

5 le by the Health and Safety Executive (see PARA 563 note 12) and whether under the Lifts Regulations 1997, SI 1997/831, or otherwise: Sch 15 para 6.

6 As to placing on the market see PARA 562 note 4.

7 As to the meaning of 'supply' see PARA 563 note 10.

8 As to the meaning of 'CE marking' see PARA 565 note 3.

9 As to the Secretary of State see PARA 349 et seq.

10 Lifts Regulations 1997, SI 1997/831, Sch 15 para 6.

11 See the Lifts Regulations 1997, SI 1997/831, reg 20; and PARA 884.

12 A notice which is so given must (1) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the lift, safety component or label, as the case may be; (2) specify the respect in which it is so suspected and give particulars thereof; (3) require the person to whom the notice is given: (a) to secure that any lift or safety component to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or (b) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and (4) warn that person that if the non-conformity continues after, or if satisfactory evidence has not been provided within, the period specified in the notice, further action may be taken under the 1997 regulations in respect of that lift or safety component or any lift or safety component of the same type placed on the market by that person: Lifts Regulations 1997, SI 1997/831, reg 19(4).

13 As to the meaning of 'installer of the lift' see PARA 562 note 4.

14 As to the meaning of 'manufacturer of the safety component' see PARA 563 note 2.

15 le pursuant to the Lifts Regulations 1997, SI 1997/831, Sch 15.

16 le pursuant to the Lifts Regulations 1997, SI 1997/831, reg 20.

17 Lifts Regulations 1997, SI 1997/831, reg 19(2). Notwithstanding these provisions, however, for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to the Health and Safety at Work etc Act 1974 s 20 (see PARA 376) as it is applied by the Lifts Regulations 1997, SI 1997/831, Sch 15 (see note 5): reg 19(3).

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General duties regarding marketing and supply of personal protective equipment.

## **(5) SUPPLY ETC OF PERSONAL PROTECTIVE EQUIPMENT**

### **567. General duties regarding marketing and supply of personal protective equipment.**

Subject to certain exceptions<sup>1</sup>, no person who is a responsible person<sup>2</sup> may place on the market<sup>3</sup> any personal protective equipment ('PPE')<sup>4</sup> unless the following requirements have been complied with in relation to it:

- 793 (1) it satisfies the basic health and safety requirements<sup>5</sup> which are applicable to that class or type of PPE and, for the purpose of satisfying those requirements where a transposed harmonised standard<sup>6</sup> covers one or more of the basic health and safety requirements, PPE which conforms to that standard is to be presumed to comply with that or, as the case may be, those basic health and safety requirements<sup>7</sup>;
- 794 (2) the appropriate conformity assessment procedure<sup>8</sup> has been carried out by the manufacturer or, where permitted by procedure, by the manufacturer's authorised representative established in the European Economic Area ('EEA')<sup>9</sup>, except that where the person placing the PPE on the market is neither the manufacturer nor his authorised representative established in the EEA the obligation to retain the technical documentation required by the appropriate conformity assessment procedure must be fulfilled by the person who places that PPE on the market<sup>10</sup>;
- 795 (3) the CE marking<sup>11</sup> has been affixed to it by the manufacturer or his authorised representative<sup>12</sup> to indicate that it conforms with all the provisions of the PPE Directive<sup>13</sup> that apply to it including the appropriate conformity assessment procedure<sup>14</sup>; and
- 796 (4) when properly maintained and used for its intended purpose it does not compromise the safety of individuals, domestic animals or property<sup>15</sup>.

No person may supply<sup>16</sup> any PPE unless that PPE is safe<sup>17</sup>.

The Secretary of State may from time to time appoint such persons as he thinks fit to be approved bodies<sup>18</sup> for the purposes of the relevant regulations<sup>19</sup>. Such bodies have a statutory power to charge fees in certain circumstances<sup>20</sup>.

1    le subject to the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 10: see note 3.

2    For these purposes, 'responsible person' means (1) the manufacturer or his authorised representative established within the EEA; or (2) where neither the manufacturer nor his authorised representative is established within the EEA, the person who places the PPE on the market: Personal Protective Equipment Regulations 2002, SI 2002/1144, regs 2(1)(b), (2). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

3    For the purposes of the Personal Protective Equipment Regulations 2002, SI 2002/1144, regs 8, 9, PPE (see note 4) is not to be regarded as being placed on the market or supplied, as the case may be, where that PPE will be brought into service in a country outside the EEA or is imported into the EEA for re-export to a country outside the EEA; but this does not apply if the CE marking (see notes 11-12), or any inscription liable to be confused therewith, is affixed thereto: regs 2(1)(b), 10.

4 'PPE' means any device or appliance designed to be worn or held by an individual for protection against one or more health and safety hazards; and also includes (1) a unit constituted by several devices or appliances which have been integrally combined by the manufacturer for the protection of an individual against one or more potentially simultaneous risks; (2) a protective device or appliance combined, separately or inseparably, with personal non-protective equipment worn or held by an individual for the execution of a specific activity; and (3) interchangeable components which are essential to its satisfactory functioning and used exclusively for such equipment: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 2(2). Any system placed on the market in conjunction with PPE for its connection to another external, additional device is to be regarded as an integral part of that PPE even if the system is not intended to be worn or held permanently by the user for the entire period of risk exposure: reg 4.

The 2002 regulations do not apply to PPE which is (a) of one of the classes specified in the list of excluded products in Sch 1; or (b) within the scope of any directive designed to achieve the same objectives as the PPE Directive (ie EC Council Directive 89/686 (OJ L399, 30.12.1989, p 18) on the approximation of the laws of the member states relating to personal protective equipment), with regard to placing on the market, free movement of goods and safety of PPE: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 5. The list of excluded PPE classes, which is expressed to be exhaustive, comprises (i) PPE designed and manufactured specifically for use by the armed forces or in the maintenance of law and order (helmets, shields, etc); (ii) PPE for self-defence (aerosol canisters, personal deterrent weapons, etc); (iii) PPE designed and manufactured for private use against: (A) adverse atmospheric conditions (headgear, seasonal clothing, footwear, umbrellas, etc); (B) damp and water (dish-washing gloves, etc); (C) heat (gloves etc); (iv) PPE intended for the protection or rescue of persons on vessels or aircraft, not worn all the time; and (v) helmets and visors intended for users of two- or three-wheeled motor vehicles: Sch 1.

5 'Basic health and safety requirements' means the requirements set out in the Personal Protective Equipment Regulations 2002, SI 2002/1144, Sch 2: reg 2(2). Schedule 2, which sets out the PPE Directive (ie EC Council Directive 89/686 (OJ L399, 30.12.1989, p 18)) on the approximation of the laws of the member states relating to personal protective equipment, Annex II, is not set out in detail in this work.

6 'Harmonised standard' means a text containing a technical specification or specifications adopted by either or both of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation upon a remit from the Commission in accordance with EC Council Directive 98/34 (OJ L204, 21.07.1998, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services; and 'transposed harmonised standard' means a standard, the reference number of which is published (1) in the United Kingdom, by the Secretary of State for Trade and Industry, in such a manner as she considers appropriate; or (2) in another EEA state, and which corresponds to a harmonised standard the reference number of which is published in the Official Journal of the European Community: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 2(1), (2).

7 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 8(1), (2)(a). The 2002 regulations, which came into force on 15 May 2002 (reg 1(1)) do not apply to any PPE which was placed on the market before 1 July 1992: reg 6. For a transitional exclusion see reg 7. Nor do they apply to PPE which is presented at any trade fair, exhibition, demonstration or the like and which is not in conformity with the provisions of the PPE Directive, provided that a visible sign clearly indicates that the PPE in question does not comply with those provisions and it may not be acquired or used until it has been made to comply with them by the responsible person: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 3(2). However, subject to reg 3(2) and regs 4-7 (see also note 4), the 2002 regulations apply to PPE: reg 3(1).

8 In accordance with the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 11. For these purposes, the appropriate conformity assessment procedure in all cases is the assembly of such technical documentation as required under Sch 3 and in addition in the case of (1) simple PPE, the EC declaration of conformity procedure described in Sch 9; (2) the series production of complex PPE, the EC declaration of conformity procedure described in Sch 9, the EC type-examination procedure described in Sch 7 and one of the two checking of PPE manufactured procedures described in Sch 8; and (3) the series production of PPE other than simple PPE or complex PPE, the EC declaration of conformity procedure described in Sch 9 and EC type-examination procedure described in Sch 7: reg 11. The provisions of the relevant Schedules are not set out in detail in this work. 'Complex PPE' means PPE of complex design intended to protect against mortal danger or against dangers that may seriously and irreversibly harm health, the immediate effects of which the designer assumes the user cannot identify in sufficient time: this category covers exclusively (a) filtering respiratory devices for protection against solid and liquid aerosols or irritant, dangerous, toxic or radiotoxic gases; (b) respiratory protection devices providing full insulation from the atmosphere, including those for use in diving; (c) PPE providing only limited protection against chemical attack or against ionising radiation; (d) emergency equipment for use in high-temperature environments the effects of which are comparable to those of an air temperature of 100 degrees C or more which may or may not be characterised by the presence of red radiation, flames or the projection of large amounts of molten materials; (e) emergency equipment for use in low temperature environments the effects of which are comparable to those of an air temperature of minus 50 degrees C or less; (f) PPE to protect against falls from a height; and (g) PPE to protect against electrical risks and dangerous voltages or that used as insulation in high-tension work: reg 2(2). 'Simple PPE' means PPE

models of simple design where the designer assumes that the user can himself assess the level of protection provided against the minimal risks concerned the effects of which, when they are gradual, can be safely identified by the user in good time: this category covers exclusively PPE intended to protect the wearer against: (i) mechanical action whose effects are superficial (eg gardening gloves and thimbles); (ii) cleaning materials of weak action and easily reversible effects (eg gloves affording protection against diluted detergent solutions); (iii) risks encountered in the handling of hot components which do not expose the user to a temperature exceeding 50 degrees C or to dangerous impacts (eg gloves and aprons for professional use); (iv) atmospheric agents of a neither exceptional nor extreme nature (eg head gear, seasonal clothing and footwear); (v) minor impacts and vibrations which do not affect vital areas of the body and whose effects cannot cause irreversible lesions (eg light anti-scalping helmets, gloves and light footwear); and (vi) sunlight (eg sunglasses): reg 2(2).

9 See the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 2(1)(b).

10 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 8(1), (2)(b).

11 'CE marking' means the CE marking referred to in the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 12 consisting of the initials 'CE' in the form shown in Sch 4 (see Sch 4 first para): reg 2(2). If the CE marking is reduced or enlarged the proportions given in the graduated drawing must be respected: Sch 4 second para. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm. This minimum dimension may be waived for small-scale PPE: Sch 4 third para.

12 In accordance with the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 12, Sch 4. Subject to the following provisions, PPE which either meets the basic health and safety requirements or is presumed to do so in accordance with reg 8(2)(a) must bear the CE marking in a visible, legible and indelible form: reg 12(1). Where the manufacturer or his authorised representative established within the Community is required to affix the CE marking to PPE it must be affixed in accordance with Schs 4 and 6: reg 12(2). Subject to reg 12(4), where any PPE is subject to any other directive or directives in addition to the PPE Directive which also provides for the affixing of the CE marking, the CE marking must indicate that the PPE also fulfils the provisions of that other directive or directives: reg 12(3). Where one or more of the other directives referred to in reg 12(3) allow the manufacturer, during a transitional period, to choose which arrangements apply, the CE marking must indicate conformity to the provisions only of the directive or directives applied by the manufacturer; and, in this case, the particulars of the directive or directives applied, as published in the Official Journal of the European Community, must be given in the documents, notices or instructions required by the directive or directives and accompanying the PPE in question: reg 12(4).

13 In EC Council Directive 89/686 (OJ L399, 30.12.1989, p 18) on the approximation of the laws of the member states relating to personal protective equipment.

14 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 8(1), (2)(c).

15 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 8(1), (2)(d).

16 For these purposes, 'supply' is to be read in accordance with the Consumer Protection Act 1987 s 46 (see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 523) and includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions are to be construed accordingly, provided always that PPE is to be regarded as having been supplied where a person (1) being a manufacturer of PPE for his own use; or (2) having imported PPE from a country or territory outside the EEA for his own use, brings that PPE into service in the course of a business: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 2(1)(b), (2).

17 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 9. For these purposes, 'safe' in relation to PPE, means that the PPE when used and maintained in accordance with its intended purpose could not compromise the health and safety of the user without prejudice to the health and safety of other individuals, domestic animals or property, and when the context admits, cognate expressions are to be construed accordingly: reg 2(2).

18 For these purposes, an approved body is a body which has been (1) appointed as a United Kingdom approved body pursuant to the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 14 (see note 19); or (2) appointed by an EEA state other than the United Kingdom, to carry out one or more of the conformity assessment procedures specified in reg 11 (see note 8) and which has been notified by the United Kingdom or by such other EEA state, as the case may be, to the European Commission and the other EEA states pursuant to the PPE Directive (ie EC Council Directive 89/686 (OJ L399, 30.12.89, p 18)) on the approximation of the laws of the member states relating to personal protective equipment, art 9(1): Personal Protective Equipment Regulations 2002, SI 2002/1144, regs 2(1)(b), (2), 13.

19 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 14(1). Such an appointment (1) may relate to all descriptions of product or such descriptions (which may be framed by reference to any

circumstances whatsoever) of product as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, which may include conditions which are to apply upon or following termination of the appointment; (3) must without prejudice to the generality of head (2) above and subject to reg 14(4), require that body to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the manufacturer duly fulfils the obligations arising out of the relevant conformity assessment procedure; (4) must be terminated upon six months' notice in writing to the Secretary of State, at the request of the approved body; and (5) may be terminated at any time by the Secretary of State if it appears to him that any of the conditions of the appointment are not complied with: reg 14(2). Subject to heads (4) and (5) above, an appointment under reg 14 may be for the time being or for such period as may be specified in the appointment: reg 14(3). An approved body appointed by the Secretary of State may not be required to carry out the functions referred to in head (3) above if (a) the documents subject to it in relation to carrying out such functions are not in English or another language acceptable to that body; (b) the person making the application has not submitted with its application the amount of the fee which the body requires to be submitted with the application pursuant to reg 15 (see note 20); or (c) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under the 2002 regulations which are outstanding, it will be unable to commence the required work within three months of receiving the application: reg 14(4). If for any reason the appointment of an approved body is terminated under reg 14, the Secretary of State may (i) give such directions (either to the body the subject of the termination or another approved body) for the purposes of making such arrangements for the determination of outstanding applications as he considers appropriate; and (ii) without prejudice to the generality of the foregoing, authorise another approved body to take over its functions in respect of such cases as he may specify: reg 14(5).

If an approved body, to whom an application has been made for an EC type-examination certificate pursuant to the EC type-examination procedure (set out in Sch 7), is not satisfied that the requirements for such a certificate are met and refuses to issue an EC type-examination certificate it must inform all other approved bodies of this: reg 14(6). If an approved body withdraws an EC type-examination certificate it must inform the Secretary of State: reg 14(7).

20 Without prejudice to the power of the Secretary of State, where he is appointed as an approved body in the United Kingdom, to charge fees pursuant to regulations made under the Finance Act 1973 s 56 and subject to the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 15(2), an approved body appointed by the Secretary of State may charge such fees in connection with, or incidental to, carrying out the tasks referred to in reg 14(2)(c) (see note 19 head (3)) as it may determine; provided that such fees are not to exceed the sum of the following: (1) the costs incurred or to be incurred by the approved body in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to: (a) the character and extent of the work done or to be done by the body on behalf of the applicant; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 15(1). The power in reg 14(1) includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant: reg 15(2).

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## **568. Enforcement.**

It is the duty of weights and measures authorities<sup>1</sup> in Great Britain<sup>2</sup> to enforce the provisions of the Personal Protective Equipment Regulations 2002<sup>3</sup>. Where action has been taken by an enforcement authority<sup>4</sup> to prohibit or restrict the placing on the market of any product to which those regulations apply which bears the CE marking<sup>5</sup>, that authority must forthwith inform the Secretary of State<sup>6</sup> of the action taken and the reasons for it with a view to this information being passed by the Secretary of State to the European Commission<sup>7</sup>.

Contravention of certain provisions of the 2002 regulations is an offence<sup>8</sup>.

Except in the case of personal protective equipment ('PPE')<sup>9</sup> which when used in accordance with its intended purpose, in the opinion of an enforcement authority, may endanger the safety of persons and, where appropriate, domestic animals or property, where an enforcement authority has reasonable grounds for suspecting that the CE marking has been affixed to the PPE, or its packaging, and in relation to which any provision of the 2002 regulations has not been complied with, it may serve notice in writing<sup>10</sup> on the responsible person<sup>11</sup> and no enforcement action may be taken<sup>12</sup>, and no proceedings may be brought<sup>13</sup>, in respect of that PPE until such notice has been given and the person to whom it is given has failed to comply with its requirements<sup>14</sup>.

1 As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

2 As to the meaning of 'Great Britain' see PARA 305 note 7.

3 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 16(1), Sch 10 para 1(a)(i). As to the application of certain enforcement provisions of the Consumer Protection Act 1987 see Sch 10 para 1(b), (c) (Sch 10 para 1(c) amended by SI 2004/693).

4 'Enforcement authority' is to be construed in accordance with the Personal Protective Equipment Regulations 2002, SI 2002/1144, Sch 10 (see the text and notes 1-3): reg 2(2).

5 As to the CE marking see PARA 567 notes 11-12.

6 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and see PARA 349 et seq.

7 Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 16(1), Sch 10 para 2.

8 See the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 17; and PARA 885.

9 As to the meaning of 'PPE' see PARA 567 note 4.

10 A notice which is so given must (1) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the PPE or its packaging; (2) specify the respect in which it is so suspected and give particulars thereof; (3) require the person to whom the notice is given (a) to secure that any PPE to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or (b) to provide evidence within that period, to the satisfaction of an enforcement authority, that the CE marking has been correctly affixed; and (4) warn that person that if the non-conformity continues after, or if satisfactory evidence has not been provided within, the period specified in the notice, further action may be taken under the 2002 regulations in respect of that PPE or PPE of the same type placed on the market by that person: reg 16(4).

11 As to the meaning of 'responsible person' see PARA 567 note 2.

12     le pursuant to the Personal Protective Equipment Regulations 2002, SI 2002/1144, Sch 10.

13     le pursuant to the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 17.

14     Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 16(2). Notwithstanding the provisions of reg 16(2), for the purposes of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to the Consumer Protection Act 1987 s 29 (powers of search etc) as it is applied by the Personal Protective Equipment Regulations 2002, SI 2002/1144, Sch 10: reg 16(3).



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## **(6) SUPPLY ETC OF PRODUCTS FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES**

### **569. Placing on the market or putting into service of equipment, protective systems, devices or components.**

Subject to certain exceptions<sup>1</sup>, no person who is a responsible person<sup>2</sup> may place on the market or put into service<sup>3</sup> any equipment<sup>4</sup>, protective system or device<sup>5</sup> to which the relevant regulations<sup>6</sup> apply unless the following requirements have been complied with in relation to it<sup>7</sup>. Those requirements are that:

- 797 (1) it satisfies the relevant essential health and safety requirements<sup>8</sup>;
- 798 (2) the appropriate conformity assessment procedure<sup>9</sup> has been carried out<sup>10</sup>;
- 799 (3) the CE marking<sup>11</sup> has been affixed<sup>12</sup> to it by the manufacturer or his authorised representative established in the European Economic Area ('EEA')<sup>13</sup>; and
- 800 (4) it is in fact safe<sup>14</sup>.

It is the duty of any person who supplies<sup>15</sup> any equipment, protective system or device to which the relevant regulations apply, but who is not a person to whom the above provisions apply, to ensure that that equipment, protective system or device is safe<sup>16</sup>. However, and without prejudice to any other safety requirement which may apply in respect of such equipment, protective system or device, this does not apply to equipment, a protective system or device which has been placed on the market in the EEA before 1 March 1996 or to the supply of any equipment, protective system or device which has previously been put into service in the EEA<sup>17</sup>.

Subject to certain exceptions<sup>18</sup>, no person who is a responsible person may place on the market any component<sup>19</sup> to which the relevant regulations apply unless the following requirements have been complied with in relation to it<sup>20</sup>. Those requirements, in respect of any component, are that:

- 801 (a) the appropriate conformity assessment procedure<sup>21</sup> has been carried out by the specified person<sup>22</sup>; and
- 802 (b) it is accompanied by a written attestation which has been issued by the manufacturer or his authorised representative established in the EEA and which declares the conformity of the component with the provisions of the ATEX Directive<sup>23</sup> which apply to it and states its characteristics and how it must be incorporated into equipment or protective systems to assist compliance with the essential requirements applicable to finished equipment or protective systems<sup>24</sup>.

The Secretary of State<sup>25</sup> may from time to time appoint such qualified persons as he thinks fit to be notified bodies<sup>26</sup> for the purposes of the relevant regulations<sup>27</sup>. Notified bodies have power to charge fees in certain circumstances<sup>28</sup>.

Subject to the following provision:

- 803 (i) equipment, a protective system or device which is accompanied by an EC declaration of conformity issued in respect of it by the manufacturer or his authorised representative established in the EEA and containing the specified elements<sup>29</sup>, and to which the CE marking is affixed<sup>30</sup>; or
- 804 (ii) a component which is accompanied by a written attestation, which has been issued in accordance with the statutory requirement<sup>31</sup>,

is to be taken to comply with all the provisions of the ATEX Directive including the appropriate conformity assessment procedure<sup>32</sup>, unless there are reasonable grounds for suspecting that it does not so comply<sup>33</sup>. This does not, however, apply in relation to the enforcement authority<sup>34</sup> where the responsible person fails or refuses to make available to the enforcement authority the documentation which he is required, by the conformity assessment procedure which applies to that equipment, protective system, device or component, to retain or a copy of it<sup>35</sup>. Nor does it apply in the case of equipment, a protective system or device which is supplied in circumstances where it has already been put in service in the EEA<sup>36</sup> and to which the CE marking is indelibly affixed<sup>37</sup>.

1 The subject to the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 9: reg 6(1). For the purposes of reg 6 or reg 8, equipment, a protective system, or device is not to be regarded as being placed on the market and put into service or, in the case of head (1) above, a component is not to be regarded as being placed on the market (1) where that equipment, protective system, device or component (a) will be put into service in a country outside the EEA; or (b) is imported into the EEA for re-export to a country outside the EEA, save that this does not apply if the CE marking, or any inscription liable to be confused therewith, is affixed thereto; or (2) by the exhibition at trade fairs and exhibitions of that equipment, protective system or device, provided that where the provisions of the 1996 regulations are not satisfied (a) a notice is displayed in relation to the equipment, protective system or device in question to the effect (i) that it does not satisfy those provisions; and (ii) that it may not lawfully be placed on the market until the responsible person has ensured that those provisions are satisfied; and (b) adequate safety measures are taken to ensure the safety of persons: regs 2(1)(b), 9 (reg 9 amended by SI 2001/3766). As to the meaning of 'equipment' see note 4; as to the meanings of 'device' and 'protective systems' see note 5; as to the meaning of 'component' see note 19; and as to the meaning of 'CE marking' see note 11. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

2 'Responsible person' means, in relation to equipment, a protective system, device or component, (1) the manufacturer of that equipment, protective system, device or component; (2) the manufacturer's authorised representative established in the EEA; or (3) where the manufacturer is not established in the EEA and either (a) he has not appointed an authorised representative established in the EEA; or (b) his authorised representative established in the EEA is not the person who places that equipment, protective system, device or component on the market or puts that equipment, protective system or device into service, the person who places it on the market or puts it into service in the EEA: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 2(1)(b), (2) (definition amended by SI 2001/3766). As to putting into service see note 3.

3 For these purposes, equipment, protective systems or devices are not to be regarded as having been put into service where a person (1) being a manufacturer of equipment, protective systems or devices for his own use; or (2) having imported equipment, protective systems or devices from a country or territory outside the EEA for his own use, puts that equipment, protective system or device into service otherwise than in the course of a business: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 2(1)(b), (3) (reg 2(3) added by SI 2001/3766).

4 For these purposes, 'equipment' means machines, apparatus, fixed or mobile devices, control components and instrumentation thereof and detection or prevention systems which, separately or jointly, are intended for the generation, transfer, storage, measurement, control and conversion of energy and the processing of material, as the case may be, and which are capable of causing an explosion through their own potential sources of ignition: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, regs 2(2), 3(2)(a) (reg 3(2)(a), (b) amended by SI 2001/3766). The 1996 regulations apply to equipment and protective systems intended for use in potentially explosive atmospheres, devices and components: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 3(1). 'Intended use' means the use of equipment, protective systems, and devices in accordance with the equipment group and category and with all the information supplied by the manufacturer which is required for the safe functioning of equipment, protective systems and

devices; 'explosive atmosphere' means the mixture with air, under atmospheric conditions, of flammable substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture; and 'potentially explosive atmosphere' means an atmosphere which could become explosive due to local and operational conditions: reg 3(2)(e)-(g).

The 1996 regulations do not, however, apply to the equipment, protective systems and devices specified in reg 4(a), Sch 5 and components for such equipment, protective systems or devices: reg 4. The equipment etc so specified is: (1) medical devices intended for use in a medical environment; (2) equipment and protective systems where the explosion hazard results exclusively from the presence of explosive substances or unstable chemical substances; (3) equipment intended for use in domestic and non-commercial environments where potentially explosive atmospheres may only rarely be created, solely as a result of the accidental leakage of fuel gas; (4) personal protective equipment covered by EC Council Directive 89/686 (OJ L399, 30.12.89, p 18) (see PARAS 567-568); (5) sea-going vessels and mobile offshore units together with equipment on board such vessels or units; (6) means of transport, ie vehicles and their trailers intended solely for transporting passengers by air or by road, rail or water networks, as well as means of transport in so far as such means are designed for transporting goods by air, by public road or rail networks or by water (vehicles intended for use in a potentially explosive atmosphere are not excluded); and (7) the equipment covered by the EC Treaty art 296(1)(b) (production of or trade in arms, munitions and war material; as to citation of the EC Treaty see PARA 340 note 1): Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 5. For transitional exclusions see reg 5.

5 For these purposes, 'protective systems' means devices other than components of equipment which are intended to halt incipient explosions immediately or limit the effective range of an explosion or both, as the case may be, and which systems are separately placed on the market for use as autonomous systems; and 'devices' means safety devices, controlling devices and regulating devices intended for use outside potentially explosive atmospheres but required for or contributing to the safe functioning of equipment and protective systems with respect to the risks of explosion: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, regs 2(2), 3(2)(b), (c) (as amended: see note 4).

6 Ie the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192.

7 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(1).

8 'Essential health and safety requirements' means the requirements in the ATEX Directive (ie European Parliament and EC Council Directive 94/9 (OJ L100, 19.04.1994, p 1)) on the approximation of the laws of the member states concerning equipment and protective systems intended for use in potentially explosive atmospheres, Annex II which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 3; and 'relevant essential health and safety requirements' in relation to equipment, a protective system or device means those provisions of the essential health and safety requirements which are applicable to that particular equipment, protective system or device, account being taken of its intended use: reg 2(1)(a), (2). Schedule 3 is not set out in detail in this work. For the purpose of satisfying those requirements, where a transposed harmonised standard covers one or more of the essential health and safety requirements, any equipment, protective system or device constructed in accordance with that transposed harmonised standard is to be presumed to comply with that or, as the case may be, those essential health and safety requirements: reg 6(2)(a)(i). For transitional provisions see reg 6(2)(a)(ii). 'Standard' or 'standard referred to in article 5' means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory: and, for the avoidance of doubt, this definition includes a harmonised standard or a transposed harmonised standard; 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation or the European Committee for Electrotechnical Standardisation or both, upon a mandate from the European Commission in accordance with European Parliament and EC Council Directive 98/34 (OJ L204, 21.07.1998, p 37) of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, and of which the reference number is published in the Official Journal of the European Communities; and 'transposed harmonised standard' means a national standard of an EEA state which transposes a harmonised standard: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 2(1), (2) (definition of 'harmonised standard' amended by SI 2005/830).

9 Ie in accordance with the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 10(1). Subject to reg 10(4), (5), for these purposes the appropriate conformity assessment procedure must, in the case of equipment and, where necessary, a device, be determined in accordance with reg 10(3) by reference to the equipment-group and equipment-category of that particular equipment or, as the case may be, device; and in the case of an autonomous protective system, be the procedure set out in reg 10(3)(a) or (d): reg 10(1). The procedures referred to in reg 10(1), (2) (see note 21) are as follows: (1) without prejudice to head (4) below, in the case of equipment-group I and II, equipment-category M 1 and 1, the manufacturer or his authorised representative established in the EEA must, in order to

affix the CE marking, follow the EC type-examination procedure (referred to in Annex III of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 6), in conjunction with (a) the procedure relating to production quality assurance (referred to in Annex IV of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 7); or (b) the procedure relating to product verification (referred to in Annex V of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 8); (2) without prejudice to head (4) below, in the case of equipment-group I and II, equipment-category M 2 and 2, (a) in the case of internal combustion engines and electrical equipment in these groups and categories, the manufacturer or his authorised representative established in the EEA must, in order to affix the CE marking, follow the EC-type examination procedure (referred to in Annex III of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 6), in conjunction with (i) the procedure relating to conformity to type referred to in Annex VI of the ATEX Directive (which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 9); or (ii) the procedure relating to product quality assurance referred to in Annex VII of the ATEX Directive (which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 10); and (b) in the case of other equipment in these groups and categories, the manufacturer or his authorised representative established in the EEA must, in order to affix the CE mark, follow the procedure relating to internal control of production (referred to in Annex VIII of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 11) and communicate the dossier, provided for in para 3 of that Annex, to a notified body, which must acknowledge receipt of it as soon as possible and must retain it; (3) without prejudice to head (4) below, in the case of equipment-group II, equipment-category 3, the manufacturer or his authorised representative established in the Community must, in order to affix the CE marking, follow the procedure relating to internal control of production referred to in Annex VIII of the ATEX Directive (which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 11); or (4) in the case of equipment-groups I and II, as an alternative to the procedures referred to in heads (1)-(3) above, the manufacturer or his authorised representative established in the Community may, in order to affix the CE marking, follow the procedure relating to CE unit verification (referred to in Annex IX of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 12): regs 2(1), 10(3).

In the case of equipment, protective systems or devices, the manufacturer or his authorised representative established in the EEA may, in order to affix the CE marking, follow the procedure relating to internal control of production (referred to in Annex VIII of the ATEX Directive, which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 11) with regard to the safety aspects referred to in Annex II, point 1.2.7 of the ATEX Directive (which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 3): regs 2(1), 10(4). Notwithstanding reg 10(1)-(4), the Secretary of State may, on a duly justified request, authorise the placing on the market and putting into service of certain equipment, protective systems and individual devices in respect of which the procedures referred to in reg 10(1)-(4) have not been applied and the use of which is in the interests of protection: see reg 10(5). Documents and correspondence relating to the above-mentioned procedures must be drawn up in one of the official languages of the EEA states in which those procedures are being applied or in a language accepted by the notified body to which an application is made pursuant to one of those procedures: regs 2(1), 10(6). 'Equipment group I' means equipment intended for use in underground parts of mines, and to those parts of surface installations of such mines, liable to be endangered by firedamp and/or combustible dust; 'equipment group II' means equipment intended for use in places, other than those which are specified for equipment group I, liable to be endangered by explosive atmospheres; and 'equipment-category' and 'category' in relation to an equipment-group are to be construed by reference to the criteria set out in Annex I of the ATEX Directive which is set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 4: reg 2(2). As to the ATEX Directive see note 8. The relevant Schedules to the 1996 regulations are not set out in detail in this work.

10 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(2)(b). That procedure must be carried out (1) by the manufacturer; or (2) where permitted by that procedure, wholly or partly as the case may be, by the manufacturer's authorised representative established in the EEA, save that (a) where the procedure in Annex III, VI or VIII of the ATEX Directive (which are respectively set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Schs 6, 9 and 11) is part of or, as the case may be, is the appropriate conformity assessment procedure; and (b) the person placing the equipment, protective system or device on the market is neither the manufacturer nor his authorised representative established in the EEA, the obligation to retain the technical documentation, required as part of that appropriate conformity assessment procedure, must be fulfilled by the person who places that equipment, protective system or device on the market: reg 6(2)(b). As to the ATEX Directive see note 8. The relevant Schedules to the 1996 regulations are not set out in detail in this work.

11 'CE marking' or 'CE conformity marking' is a reference to a marking consisting of the initials 'CE' in the form shown in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 2: reg 2(2).

12 le in accordance with the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6, Sch 2; and Sch 2 has effect for that purpose: reg 6(2)(c).

13 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(2)(c).

14 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(2)(d). 'Safe' in relation to equipment, a protective system or a device means that, when properly installed and maintained and used for its intended purpose, it does not endanger the health and safety of persons and, where appropriate, domestic animals or property and cognate expressions are to be construed accordingly: reg 2(2).

15 'Supply' includes offering to supply, agreeing to supply, exposing for supply and possessing for supply and cognate expressions are to be construed accordingly: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 2(2).

16 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 7(1).

17 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, regs 2(1), 7(2).

18 le subject to the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 9(a): see note 1 head (1).

19 'Component' means any item essential to the safe functioning of equipment and protective systems but with no autonomous function: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, regs 2(2), 3(2)(d).

20 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 8(1).

21 For the purposes of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 8(2)(a) (see head (a) in the text), in the case of a component the appropriate conformity assessment procedure is to be the procedure set out in reg 8(3), which relates to the equipment or protective system into which that component is to be incorporated, with the exception of the affixing of the CE marking: reg 10(2).

22 le by the person specified in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(2)(b): see note 10.

23 As to the ATEX Directive see note 8.

24 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 8(2) (amended by SI 2001/3766).

25 As to the Secretary of State see PARA 349 et seq.

26 For these purposes, a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures specified in the ATEX Directive art 8 and referred to in Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 10 and which has been (1) appointed as a notified body in Great Britain pursuant to reg 12; (2) appointed as a notified body in Northern Ireland; (3) appointed by an EEA state other than the United Kingdom; or (4) recognised for the purpose of carrying out the relevant procedure by inclusion in a mutual recognition agreement, relating to the ATEX Directive, or a similar agreement (including a Protocol to the European Agreement, or other Agreement, on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the EEA and a state other than an EEA state, and in the case of heads (1)-(3) above has been notified by the EEA state concerned to the European Commission and the other EEA states pursuant to the ATEX Directive art 9(1): Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, regs 2(1), (2), 11 (reg 11 substituted by SI 2005/830).

27 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 12(1). An appointment (1) may relate to all descriptions of equipment, protective systems, devices or components or such descriptions (which may be framed by reference to any circumstances

whatsoever) of equipment, protective systems, devices or components as the Secretary of State may from time to time determine; (2) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment; (3) must, without prejudice to the generality of head (2) above, require that body, subject to reg 12(4), to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the manufacturer duly fulfils the obligations arising out of the relevant quality assurance procedure; (4) must be terminated (a) if it appears to the Secretary of State that the notified body is no longer a qualified person; or (b) upon 90 days' notice in writing to the Secretary of State, at the request of the notified body; and (5) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with: reg 12(2). Subject to heads (4)-(5) above, an appointment under reg 12 may be for the time being or for such period as may be specified in the appointment: reg 12(3). A notified body appointed by the Secretary of State may not be required to carry out the functions referred to in head (3) above if (i) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body; (ii) the person making the application has not submitted with its application the amount of the fee which the body requires to be submitted with the application pursuant to reg 13 (see note 28); or (iii) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under the 1996 regulations which are outstanding, it will be unable to commence the required work within three months of receiving the application: reg 12(4). If for any reason the appointment of a notified body is terminated under reg 12, the Secretary of State may authorise another notified body to take over its functions in respect of such cases as he may specify: reg 12(5).

A notified body which is responsible, as part of any of the conformity assessment procedures referred to in reg 10, for the assessment of the conformity of electrical equipment placed on the market before 1 July 2003, must take account of the results of tests and verifications already carried out in respect of the harmonised standards which are applicable under (A) EC Council Directive 76/117 (OJ L24, 30.01.1976, p 45) on the approximation of the laws of the member states concerning electrical equipment for use in potentially explosive atmospheres and EC Council Directive 79/196 (OJ L43, 20.02.1979, p 20) on the approximation of the laws of the member states concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection; or (B) EC Council Directive 82/130 (L59, 02.03.1982, p 10) on the approximation of the laws of the member states concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 12(6). If a notified body, to which an application has been made for an EC type-examination certificate pursuant to the EC type-examination procedure (referred to in Annex III of the ATEX Directive and set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 6), is not satisfied that the requirements for such a certificate are met and is minded to refuse to issue an EC type-examination certificate, it must inform the applicant in writing of the reasons why it proposes to refuse to issue an EC type-examination certificate, give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused and, if, after considering any representations so made, it remains unsatisfied in respect of those requirements, it must notify its decision in writing to the applicant stating the grounds on which the refusal is based and inform the applicant in writing of the procedure which it has established whereby an appeal may be made against that decision: reg 12(7). For these purposes, 'qualified person' means a person (which may include the Secretary of State) who meets the minimum criteria; and 'minimum criteria' means the criteria set out in Annex XI to the ATEX Directive (minimum criteria to be taken into account by EEA states for the notification of bodies): Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 12(8).

28 Without prejudice to the power of the Secretary of State, where he is a notified body, to charge fees pursuant to regulations made under the Finance Act 1973 s 56 and subject to the following provisions, a notified body appointed by the Secretary of State, other than the Secretary of State, may charge such fees in connection with, or incidental to, carrying out its duties in relation to the functions referred to in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 12(2)(c) (see note 27 head (3)) as it may determine; provided that such fees may not exceed the sum of the following: (1) the costs incurred or to be incurred by the notified body in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to (a) the character and extent of the work done or to be done by the body on behalf of the applicant; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 13(1). The power in reg 13(1) includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant: reg 13(2).

29 Ie the elements set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 13. Schedule 13 is not set out in detail in this work.

30 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 14(1)(a).

31 Ie in accordance with the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 8(2)(b): see head (b) in the text.

32    Ie the procedure specified in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 10: see note 9.

33    Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 14(1)(b) (amended by SI 2001/3766).

34    'Enforcement authority' means the Health and Safety Executive: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 2(2). As to the Health and Safety Executive see PARA 361 et seq.

35    Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 14(2)(a).

36    Ie the circumstances described in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 7(2)(b).

37    Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 14(2)(b).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC/(6) SUPPLY ETC OF PRODUCTS FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES/570. Enforcement.

## **570. Enforcement.**

In relation to relevant products<sup>1</sup>, it is the duty of the Health and Safety Executive<sup>2</sup> to make adequate arrangements for the enforcement of the relevant regulations<sup>3</sup>. An enforcement authority<sup>4</sup> in England and Wales may apply for an order for the forfeiture of any relevant product on the grounds that there has been a contravention in relation to it of any of the regulations<sup>5</sup> relating to the placing on the market or putting into service of equipment, protective systems, devices or components<sup>6</sup>. Where any relevant product is forfeited it must be destroyed in accordance with such directions as the court may give<sup>7</sup>. The enforcement authority must, where action has been taken by it to prohibit or restrict the placing on the market, the supply or putting into service, whether under the relevant regulations<sup>8</sup> or otherwise, of any relevant product which bears the CE marking<sup>9</sup> forthwith inform the Secretary of State<sup>10</sup> of the action taken, and the reasons for it, with a view to this information being passed by him to the European Commission<sup>11</sup>.

Contravention of certain provisions of the relevant regulations is an offence<sup>12</sup>.

Except in the case of equipment, a protective system or device which, in the opinion of the enforcement authority, is not safe<sup>13</sup>, where the enforcement authority has reasonable grounds for suspecting that the CE marking has not been correctly affixed to equipment<sup>14</sup>, a protective system or device, as the case may be, it may give notice in writing<sup>15</sup> to the responsible person<sup>16</sup> who placed that equipment, protective system or device, on the market and, subject to certain exceptions<sup>17</sup>, no enforcement action<sup>18</sup> may be taken, and no proceedings may be brought<sup>19</sup>, in respect of that equipment, protective system or device, as the case may be, until such notice has been given and the person to whom it is given has failed to comply with its requirements<sup>20</sup>.

1 For these purposes, 'relevant product' means an item of equipment, a protective system, a device or component, as the case may be, to which the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192 apply: reg 15(1), Sch 14 para 7. As to such products see PARA 569.

2 As to the Health and Safety Executive see PARA 361 et seq.

3 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 1(a). The regulations referred to in the text are those 1996 regulations. Accordingly a reference in the provisions applied for the purposes of such enforcement by Sch 14 para 1(b) to an 'enforcing authority' is to be construed as a reference to the Executive: Sch 14 para 1(a).

The Health and Safety at Work etc Act 1974 ss 19-28, 33-35, 38, 39, 41 and 42 apply for the purposes of providing for the enforcement of the 1996 regulations and in respect of proceedings for contravention thereof as if (1) references to relevant statutory provisions were references to those sections as so applied and to those regulations; (2) references to articles, substances, articles and substances, or plant, were references to relevant products; (3) references to the field of responsibility of an enforcing authority, however expressed, were omitted; (4) s 20(3) were omitted; (5) s 23(3), (4) and (6) were omitted; (6) s 33(1)(a)-(d) were omitted; s 33(1A) were omitted; in s 33(2), the reference to s 33(1)(d) were omitted; s 33(2A) were omitted; for s 33(3) there were substituted the following: '(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1)(e) above not falling within that subsection shall be liable (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or (b) on conviction on indictment (i) in the case of an offence under subsection (1)(g), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or in all other cases, to a fine.'; and s 33(4) were omitted; (7) s 34(1)(a), (b) were omitted; in s 34(3) for 'six months' there were substituted '12 months'; and (8) s 42(4) and (5) were omitted; and ss 36(1), (2), 37 (see PARAS 859-860) apply in relation to offences



under s 33 (see PARAS 852-853) as applied by head (6) above: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 1(b), (c).

4 As to the meaning of 'enforcement authority' see PARA 569 note 34.

5 Ie a contravention of any of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6, reg 7 or reg 8: see PARA 569.

6 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 2(1). Such an application may be made (1) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the relevant products under reg 16 (see PARA 886) to that court; and (2) where no such application for the forfeiture of the relevant product has been made, by way of complaint to a magistrates' court: Sch 14 para 2(2). On such an application the court may make an order for the forfeiture of the relevant products only if it is satisfied that there has been a contravention in relation thereto of reg 6, reg 7 or reg 8: Sch 14 para 2(3). For the avoidance of doubt it is declared that a court may infer for these purposes that there has been a contravention in relation to any relevant products of reg 6, 7 or 8 if it is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise): Sch 14 para 2(4). Any person aggrieved by an order made under this provision by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision to the Crown Court and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under the Magistrates' Courts Act 1980 s 111 (statements of case)): Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 2(5).

7 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 2(6). On making such an order a magistrates' court may, if it considers it appropriate to do so, direct that the relevant product to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person (1) does not supply the relevant product to any person otherwise than (a) to a person who carries on a business of buying relevant products of the same description as the first mentioned product and repairing or reconditioning it; or (b) as scrap (ie, for the value of materials included in the relevant product rather than for the value of the relevant product itself); and (2) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture: Sch 14 para 2(7).

8 Ie under the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192.

9 As to the meaning of 'CE marking' see PARA 569 note 11.

10 As to the Secretary of State see PARA 349 et seq.

11 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 4. Nothing in the 1996 regulations is to be construed as preventing the taking of any action in respect of any relevant product under the provisions of the Health and Safety at Work etc Act 1974: Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 para 5.

12 See the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 16; and PARA 886.

13 As to the meaning of 'safe' see PARA 569 note 14.

14 For these purposes, the CE marking is correctly affixed to equipment, a protective system or device, as the case may be, if (1) it has been affixed in accordance with the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6(2)(c) (see PARA 569); and (2) the appropriate conformity assessment procedure has been carried out in respect of that equipment, protective system or device in accordance with reg 6(2)(b) (see PARA 569): reg 15(5).

15 Notice which is so given must (1) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the equipment, protective system or device, as the case may be; (2) specify the respect in which it is so suspected and give particulars thereof; (3) require the person to whom the notice is given (a) to secure that any equipment, protective system or device, as the case may be, to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or (b) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and (4) warn that person that if the non-conformity continues after (or if satisfactory evidence has not been provided within) the period specified in the

notice, further action may be taken under the regulations in respect of that equipment, protective system or device, as the case may be, or any equipment, protective system or device of the same type placed on the market by that person: reg 15(4).

16 As to the meaning of 'responsible person' see PARA 569 note 2.

17 Notwithstanding the provisions of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 15(2), for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to the Health and Safety at Work etc Act 1974 s 20 (see PARA 376) as it is applied by the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14 (see note 3): reg 15(3).

18 Ie under the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, Sch 14.

19 Ie under the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 16.

20 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 15(2).

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## **(7) SUPPLY ETC OF DANGEROUS CHEMICALS, SUBSTANCES AND PREPARATIONS**

### **571. Information relating to dangerous chemical substances.**

No person may supply<sup>1</sup> a dangerous substance<sup>2</sup> or a dangerous preparation<sup>3</sup> unless it has been classified in accordance with the relevant regulations<sup>4</sup>.

The supplier of a dangerous substance or a dangerous preparation must provide the recipient of that dangerous substance or dangerous preparation with a safety data sheet compiled in accordance with the requirements of REACH<sup>5</sup>.

The person who is responsible for first supplying a dangerous preparation must maintain a record of the information used for the purposes of classifying that dangerous preparation for at least three years after the date on which that dangerous preparation was supplied by him for the last time<sup>6</sup>. When requested by the enforcing authority<sup>7</sup> to do so, he must make the record, or a copy of the record, so maintained by him available to the enforcing authority within 28 days of the date of the request<sup>8</sup>. When requested to do so by the enforcing authority, a person who supplies a dangerous preparation must provide to the enforcing authority a copy of any certificate issued by a qualified test house<sup>9</sup>.

1 'Supply' in relation to a substance or preparation means making that substance or preparation available to another person and includes importation of the substance or preparation into Great Britain, and 'supplier' is to be construed accordingly: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1). As to the meaning of 'Great Britain' see PARA 305 note 7.

2 'Dangerous substance' means a substance which is listed in the CLP Regulation Annex VI Pt 3 Table 3.2 or, if it is not so listed, which is in one or more of the categories of danger specified in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 1 col 1; 'substance' means a chemical element and its compounds in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition; and 'CLP Regulation' means European Parliament and EC Council Regulation 1272/2008 (OJ L 353, 31.12.2008, p 1) on classification, labelling and packaging of substances and mixtures amending and repealing EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) and EC Directive 1999/45 (OJ L 200, 30.7.1999, p 1), and amending European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) of which arts 6(5), 11(3), 12, 14, 18(3)(b), 23, 25-29, 35(2) second and third sub-paragraph and Annexes I-VII are as amended from time to time: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1). Schedule 1 is not set out in detail in this work.

3 'Dangerous preparation' means a preparation which is in one or more of the categories of danger specified in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 1 col 1; 'preparation' means a mixture or a solution of two or more substances; and 'category of danger' means, in relation to a dangerous substance or dangerous preparation, one of the categories of danger specified in Sch 1 col 1: reg 2(1).

4 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4(1). The classification of a dangerous substance which is listed in the CLP Regulation Annex VI Pt 3 Table 3.2 must be the classification for that substance specified in that list: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4(2). A dangerous substance which is not a phase-in substance within the meaning of REACH, which is not listed in the CLP Regulation Annex VI Pt 3 Table 3.2 and which has been registered in accordance with Title II of REACH, must be classified in conformity with that registration: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4(3). 'REACH'

means European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1). Subject to reg 4(5), a dangerous substance which is not classified in accordance with reg 4(2) or (3) must be classified (1) by ascertaining which of the properties specified in Sch 1 col 2 applies to the dangerous substance and by placing the dangerous substance in one or more of the categories of danger specified in the corresponding entry in Sch 1 col 1 of that part; (2) by assigning to the dangerous substance the appropriate risk phrases by the use of the criteria set out in the approved classification and labelling guide; and (3) where it is proposed to classify a dangerous substance in the category of danger carcinogenic, mutagenic or toxic for reproduction, by an assessment of the evidence by a competent person: reg 4(4). Before a dangerous substance is classified in accordance with reg 4(4), persons carrying out the classification must make themselves aware of all relevant and accessible data which may exist in relation to the dangerous substance in question: reg 4(5). Where a manufacturer, distributor or importer has classified a substance, in accordance with the provisions of reg 4(4), as a dangerous substance in the category of danger carcinogenic, mutagenic or toxic for reproduction, that person must send to the Health and Safety Executive as soon as possible a document summarising the information on which the classification was based and including all relevant references and unpublished data, unless that document has already been sent to the relevant authority in another EEA state in which the dangerous substance has been supplied: reg 4(6). 'Risk phrase' means a risk phrase listed in EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) Annex III; a risk phrase may be designated by the letter 'R' followed by a distinguishing number or combination of numbers: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1), (5)(a). 'Approved classification and labelling guide' means the guide entitled 'Approved Guide to the Classification and Labelling of Dangerous Substances and Dangerous Preparations (Fifth Edition)' approved by the Health and Safety Commission on 16 April 2002, as revised or re-issued from time to time; and 'EEA state' means a state which is a contracting party to the EEA Agreement (ie the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and adopted as respects the United Kingdom by the European Economic Area Act 1993): Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1). As to enforcement of REACH see **PARAS 574-579**. As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) **PARA 386** note 1. As to the Health and Safety Executive see **PARA 361** et seq.

A dangerous preparation must be classified in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 3 and, where applicable, by use of the criteria contained in the approved classification and labelling guide: reg 4(7). Schedule 3 is not set out in detail in this work.

Subject to reg 3(2)-(6), the 2009 regulations apply to any dangerous substance or dangerous preparation: reg 3(1). Those regulations do not, however, apply to a substance or preparation which is (a) intended for use as a medicinal product within the meaning of the Medicines Act 1968 s 130; (b) intended for use as a veterinary medical product within the meaning of the Veterinary Medicines Regulations 2008, SI 2008/2297, reg 2(1); (c) intended for use as an investigational medical product within the meaning of the Medicines for Human Use (Clinical Trials) Regulations 2004, SI 2004/1031; (d) specified in an order made under the Medicines Act 1968 s 104 or s 105 which is for the time being in force and which directs that specified provisions of the Medicines Act 1968 are to have effect in relation to that dangerous substance or dangerous preparation as such provisions have effect in relation to medicinal products within the meaning of that Act; (e) a controlled drug within the meaning of the Misuse of Drugs Act 1971 except that they apply to drugs which are excepted from s 4(1)(b) (which makes it unlawful to supply a controlled drug) by regulations made under s 7(1)(a); (f) a cosmetic product within the meaning of the Cosmetic Products (Safety) Regulations 2008, SI 2008/1284 (see **SALE OF GOODS AND SUPPLY OF SERVICES**); (g) in the form of waste to which the Waste Management Licensing Regulations 1994, SI 1994/1056, the Special Waste Regulations 1996, SI 1996/972, (in relation to England) the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, or (in relation to Wales) the Hazardous Waste (Wales) Regulations, SI 2005/1806, apply; (h) intended for use as food within the meaning of the Food Safety Act 1990 s 1; (i) intended for use as an animal feeding stuff within the meaning of the Agriculture Act 1970 s 66(1); (j) radioactive substances or preparations containing radioactive substances; or (k) a medical device within the meaning of the Medical Devices Regulations 2002, SI 2002/618, which is invasive or used in direct contact with the human body, in the finished state, intended for the final user: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 3(2). 'Radioactive substance' means a substance which contains one or more radionuclides whose activity or concentration cannot be disregarded as far as radiation protection is concerned: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1).

Nor do the 2009 regulations apply to (i) a substance or preparation which is a sample taken by an authority responsible for the enforcement of any requirement imposed by or under any enactment; (ii) a substance or preparation which is under customs control; (iii) subject to European Parliament and EC Council Regulation 689/2008 (OJ L204, 31.7.2008, p 1) of 17 June 2008 concerning the export and import of dangerous chemicals, Annexes I and V of which are as amended from time to time: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 3(3).

The regulations do not apply to the carriage of substances or preparations by rail, road, inland waterway, sea or air: reg 3(6); as to such carriage see **CARRIAGE AND CARRIERS**. Subject to that, the regulations and the CLP

Regulation apply to any activity outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as they apply to activities within Great Britain: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 16. For transitional provisions see reg 13.

5 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 5. As to those requirements see European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 31. As to the enforcement of REACH see PARAS 574-579. As to the general duty to supply information about risks and precautions see the Health and Safety at Work etc Act 1974 s 6(4)(c); and PARA 531 head (c).

6 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 12(1)(a).

7 Notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 (see PARAS 370, 372), and subject to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(4), (5), the enforcing authority for the 2009 regulations is the Health and Safety Executive: regs 2(1), 14(3). Subject to reg 14(5), where a dangerous substance or a dangerous preparation is supplied, or a substance, mixture or article falling within the meaning of and the provisions of the CLP Regulation is placed on the market within the meaning of the CLP Regulation, in or from premises which are registered under the Medicines Act 1968 s 75, the enforcing authority for these purposes is the Royal Pharmaceutical Society: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(4). The enforcing authority for the purposes of the 2009 regulations and the CLP Regulation is the local weights and measures authority (1) where a substance or preparation is supplied or a substance, mixture or article falling within the meaning of and the provisions of the CLP Regulation is placed on the market within the meaning of the CLP Regulation other than in the circumstances referred to in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(4), (a) in or from any shop, mobile vehicle, market stall or other retail outlet; or (b) otherwise to members of the public, including by way of free sample, prize or mail order; (2) for reg 11 (see PARA 572); (3) for the CLP Regulation arts 35(2) and 48: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(5). In every case where, by virtue of reg 14 and the CLP Regulation, the 2009 regulations and the CLP Regulation are enforced by the Royal Pharmaceutical Society or the local weights and measures authority, they are to be enforced as if they were safety regulations made under the Consumer Protection Act 1987 s 11 and the provisions of s 12 apply to them as if they were safety regulations and as if the maximum period of imprisonment on summary conviction specified in s 12(5) were three months instead of six months: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(6). See further **SALE OF GOODS AND SUPPLY OF SERVICES**. As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

To the extent that they would not otherwise do so, the Health and Safety at Work etc Act 1974 ss 16-28 (approval of codes of practice and enforcement, indemnification of inspectors; power to obtain information and restrictions on disclosure of information: see PARAS 369, 372-382, 426), ss 33-42 (provisions as to offences: see PARA 852 et seq) and s 47(2) (civil liability: see PARA 420) apply to the 2009 regulations and the CLP Regulation as if they were health and safety regulations for the purposes of that Act, except that those sections will not apply to duties placed by the CLP Regulation on the competent authority or the member state; and any function of the Health and Safety Executive under any other provision of the 1974 Act under or in respect of health and safety regulations (including their enforcement) is exercisable as if the 2009 regulations and the CLP Regulation were health and safety regulations for the purposes of that Act to the extent that they would not otherwise be so: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 14(1), (2). In any proceedings for an offence for a contravention of any of the provisions of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, and the CLP Regulation it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 15.

8 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 12(2).

9 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 12(3).

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**572. Packaging and labelling of dangerous substances and dangerous preparations.**

No person may supply<sup>1</sup> a dangerous substance<sup>2</sup>, dangerous preparation<sup>3</sup> or specified preparation<sup>4</sup> unless its packaging satisfies the following requirements:

- 805 (1) the receptacle<sup>5</sup> containing the dangerous substance or dangerous preparation is designed and constructed so that its contents cannot escape;
- 806 (2) the materials constituting the packaging and fastenings are not susceptible to adverse attack by the contents or liable to form dangerous compounds with the contents;
- 807 (3) the packaging and fastenings are strong and solid throughout to ensure that they will not loosen and will meet the normal stresses and strains of handling; and
- 808 (4) any replaceable fastening fitted to the receptacle containing the dangerous substance or dangerous preparation is designed so that the receptacle can be repeatedly refastened without the contents of the receptacle escaping<sup>6</sup>.

This does not, however, apply where a special safety device is fitted to the receptacle<sup>7</sup>.

Subject to certain exceptions<sup>8</sup>, no person may supply a dangerous substance or dangerous preparation unless the specified particulars<sup>9</sup> are clearly shown<sup>10</sup>:

- 809 (a) on the receptacle containing the dangerous substance or dangerous preparation; and
- 810 (b) if that receptacle is inside one or more layers of packaging, on any such layer which is likely to be the outermost layer of packaging during the supply or use of the dangerous substance or dangerous preparation, unless such packaging permits the particulars shown on the receptacle or other packaging to be clearly seen<sup>11</sup>.

Indications such as 'non-toxic', 'non-harmful', 'non-polluting', 'ecological' or any other statement indicating that the dangerous substance or preparation is not dangerous or that is likely to lead to underestimation of the dangers of the dangerous substance or preparation must not appear on the package<sup>12</sup>.

There are particular labelling requirements for certain preparations<sup>13</sup>. Provision is also made for child resistant fastenings, tactile warning devices and other consumer protection measures<sup>14</sup>.

The person who is responsible for first supplying a dangerous preparation must maintain a record of the information used for the purposes of labelling that dangerous preparation in accordance with the above provisions, and relating to any child resistant fastening or any tactile warning which forms part of the packaging in which the dangerous preparation in question is contained, for at least three years after the date on which that dangerous preparation was supplied by him for the last time<sup>15</sup>.

1 As to the meaning of 'supply' see PARA 571 note 1.

2 As to the meaning of 'dangerous substance' see PARA 571 note 2.

3 As to the meaning of 'dangerous preparation' see PARA 571 note 3.

4 le a preparation specified in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 11(3). The specified substances and preparations are (1) dangerous substances and dangerous preparations which are required to be labelled with the indication of danger 'very toxic', 'toxic' or 'corrosive'; (2) preparations containing methanol in a concentration equal to or more than 3% by weight; (3) preparations containing dichloromethane in a concentration equal to or more than 1% by weight; (4) substances which are assigned the risk phrase R65 in the CLP Regulation Annex VI Pt 3 Table 3.2, except where such a substance is supplied in an aerosol dispenser or a container fitted with a sealed spray attachment; and (5) substances and preparations which are assigned the risk phrase R65 and are classified and labelled according to the approved classification and labelling guide, except where such a substance or preparation is supplied in an aerosol dispenser or a container fitted with a sealed spray attachment: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 11(3). For additional requirements for the closure of containers see reg 11(2). 'Aerosol dispenser' means an article which consists of a non-reusable receptacle containing a gas compressed, liquefied or dissolved under pressure, with or without liquid, paste or powder and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state: reg 2(1). As to the meanings of 'risk phrase' and 'approved classification and labelling guide' see PARA 571 note 4.

5 'Receptacle' means a container together with any material, wrapping and component, including any closure or fastener, associated with the container which enables the container to perform its containment function: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1).

6 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 6(1). Packaging and fastenings are to be deemed to comply with the requirements of heads (1)-(3) in the text if they comply with the relevant requirements of (1) the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348); (2) the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367; or (3) the Air Navigation (Dangerous Goods) Regulations 2002, SI 2002/2786: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 6(3). See further **AIR LAW; CARRIAGE AND CARRIERS; SHIPPING AND MARITIME LAW**. As to the general duty to ensure that a product is safe when being handled, stored, transported etc see the Health and Safety at Work etc Act 1974 s 6(4)(a); and PARA 531 head (a).

The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, regs 6-11 only apply to substances and preparations which are supplied in packages; and do not apply to munitions and explosives which are placed on the market with a view to obtaining an explosive or pyrotechnic effect: reg 3(5), (6). For these purposes, 'package' means, subject to reg 2(3), the package in which a dangerous substance, dangerous preparation or preparation specified in reg 11(3) is supplied, including the receptacle containing the dangerous substance or preparation in question, or a pallet or other device which enables more than one receptacle to be handled as a unit, but does not include a container used to transport the dangerous substance or preparation unless that container is retained by the person to whom the dangerous substance or preparation is supplied for the purpose of storing that dangerous substance or preparation, and related expressions are to be construed accordingly: reg 2(2). In the case of supply by way of retail sale, a package does not include any paper or plastic bag or other form of outer wrapping in which the package is placed when it is presented to the purchaser: reg 2(3). As to the application of the 2009 regulations see further PARA 571.

7 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 6(2).

8 le subject to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(5)-(9) and reg 8. Where the package contains such small quantities of that substance or preparation that there is no foreseeable risk, under conditions of supply, use and disposal, arising from that hazardous property to persons handling that substance or preparation or to other persons, the packaging of a dangerous substance or dangerous preparation classified in one or more of the categories of danger harmful, extremely flammable, highly flammable, flammable, irritant or oxidising is not required to be labelled in respect of that hazardous property: reg 7(5), (6). The packaging of a dangerous preparation classified in the category of danger dangerous for the environment (with or without the 'N' symbol) is not required to be labelled in respect of its environmental hazard in accordance with reg 7 provided that it contains such small quantities of that preparation that there is no foreseeable risk, under conditions of supply, use and disposal, to the environment: reg 7(7). Where the package in which a dangerous substance is supplied does not contain more than 125 millilitres of that substance the risk phrases and safety phrases need not be shown if the dangerous substance is classified only in one or more of the categories of danger: (1) highly flammable, flammable, oxidising or irritant; or (2) harmful, provided the dangerous substance is not sold to the general public: reg 7(8). Where the package in which a dangerous preparation is supplied does not contain more than 125 millilitres of that preparation (a) the risk phrases and safety phrases need not be shown if the dangerous preparation is classified only in one or more of the categories of danger: (i) irritant (except those assigned the risk phrase R41); (ii) dangerous for the environment and assigned the N symbol; (iii) oxidising; or (iv) highly flammable; and (b) the safety phrases need not be shown if the dangerous preparation is classified only in one or more of the

categories of danger: (i) flammable; or (ii) dangerous for the environment and not assigned the 'N' symbol: reg 7(9).

Where reference is made to a quantity of a dangerous substance or dangerous preparation expressed in litres, that reference means (A) in the case of a liquid, the volume in litres of that liquid; (B) in the case of a compressed gas, the volume in litres of the receptacle containing that gas; and (C) in the case of a compressed gas dissolved in a solvent, liquefied gas or solid, the same number of kilograms of that gas or solid; and, for the purposes of aggregation, one kilogram of a solid is to be deemed to be equivalent to one litre of liquid or gas: reg 2(4). 'Safety phrase' means a safety phrase listed in EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) Annex IV; a safety phrase may be designated by the letter 'S' followed by a distinguishing number or combination of numbers: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1), (5)(b). See also reg 8, cited in note 9.

9 The particulars specified in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(2) relating to a dangerous substance or in reg 7(3) relating to a dangerous preparation. The particulars required to be shown in relation to a dangerous substance are (1) the name, full address and telephone number of a person in an EEA state who is responsible for supplying the substance, whether the person be its manufacturer, importer or distributor; (2) the name of the substance being, where the substance appears in the CLP Regulation Annex VI Pt 3 Table 3.2, the name or one of the names listed therein for that substance or, where the substance does not appear in the CLP Regulation Annex VI Pt 3 Table 3.2, an internationally recognised name; and (3) the following particulars ascertained in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 4 Pt I, namely (a) any indications of danger together with corresponding symbols; (b) the risk phrases, set out in full; (c) the safety phrases, set out in full; and (d) any EC number and, in the case of a substance which is listed in the CLP Regulation Annex VI Pt 3 Table 3.2, the words 'EC label': Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(2). 'Indication of danger' means, in relation to a dangerous substance or dangerous preparation, one or more of the indications of danger referred to in Sch 2 col 1 and, in the case of a dangerous substance listed in the CLP Regulation Annex VI Pt 3 Table 3.2, it is one or more of the indications of danger specified for that substance by a symbol-letter in that list, and in the case of any other dangerous substance or a dangerous preparation, it is one or more indications of danger determined in accordance with the classification of that substance or preparation in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4 and the approved classification and labelling guide: reg 2(1). 'EC number' means, in the case of a dangerous substance that appears in the CLP Regulation Annex VI Pt 3 Table 3.2, the EC number specified in that list, in the case of a dangerous substance that is not included in the CLP Regulation Annex VI Pt 3 Table 3.2 or for which an EC number is not given in that list, the number for that substance specified in EINECS or, in the case of a dangerous substance that is not a phase-in substance within the meaning of REACH, the number for that substance if it is listed in ELINCS; 'EINECS' means the European Inventory of Existing Commercial Chemical Substances; and 'ELINCS' means the European List of Notified Chemical Substances: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 2(1). As to the meaning of 'EEA state' see PARA 571 note 4. As to the meaning of 'REACH' see PARA 571 note 4. The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Schs 2, 4 are not set out in detail in this work.

The particulars required to be shown in relation to a dangerous preparation are (i) the name, full address and telephone number of a person in an EEA state who is responsible for supplying the preparation, whether that person be its manufacturer, importer or distributor; (ii) the trade name or other designation of the preparation; and (iii) the following particulars ascertained in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 4 Pt I, namely (A) identification of the constituents of the preparation which result in it being classified as a dangerous preparation; (B) any indications of danger together with corresponding symbols; (C) the risk phrases, set out in full; (D) the safety phrases, set out in full; (E) in the case of a preparation intended for sale to the general public, the nominal quantity (nominal mass or nominal volume): reg 7(3).

Where except for reg 8, a package would be required to show the particulars required by reg 7 and to be labelled and marked in accordance with any of the national or international transport rules, it is sufficient compliance with reg 7 if the package shows the particulars specified in reg 8(2) or (3): reg 8(1). Where the package consists of only a single receptacle, the specified particulars are (aa) the particulars required by reg 7(2)(a), (b), (c)(ii), (iii) and (iv) in the case of substances and reg 7(3)(a), (b), (c)(i), (iii), (iv) and (v) in the case of preparations, in accordance with reg 10; (bb) the labels and markings required by whichever of the national or international transport rules is appropriate; and (cc) where a substance or preparation has been classified as dangerous for the environment, the appropriate indication of danger and the danger symbol from Sch 2 in accordance with reg 10 (see note 11): reg 8(2). Where the package consists of one or more receptacles in outer packagings, the particulars specified are the labels and markings required by whichever of the national or international transport rules is appropriate: reg 8(3). For these purposes and the purposes of reg 9(3), the national transport rules are the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367; the Air Navigation (Dangerous Goods) Regulations 2002, SI 2002/2786; and the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348); and the international transport rules are the European Agreement concerning the International



Carriage of Dangerous Goods by Road signed at Geneva on 30 September 1957, as revised or reissued from time to time ('ADR'); the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway, as revised or reissued from time to time ('ADN'); the Technical Instructions for the Safe Transport of Dangerous Goods by Air, as revised or reissued from time to time ('ICAO'); the International Maritime Dangerous Goods Code, as revised or reissued from time to time ('IMDG'); and the Regulation concerning the International Carriage of Dangerous Goods by Rail including its Annex ('RID') which together form Appendix C to the Convention concerning International Carriage by Rail ('COTIF'), as revised or reissued from time to time: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 8(4).

10 The shown in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 10. Any package which is required to be labelled in accordance with regs 7-9 may carry the particulars required to be on the label clearly and indelibly marked on a part of that package reserved for that purpose and, unless the context otherwise requires, any reference in the 2009 regulations to a label includes a reference to that part of the package so reserved: reg 10(1). The package must be so labelled that the particulars can be read horizontally when the package is set down normally: reg 10(4). For further requirements as to labelling see reg 10(2), (3), (5)-(7).

11 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(1). Where a dangerous substance or dangerous preparation is required to be labelled in accordance with the 2009 regulations and is so labelled, that labelling is to be deemed to satisfy the requirements of the Petroleum (Consolidation) Act 1928 s 5 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1625) including s 5 as applied to any dangerous substance by an Order in Council made under s 19 (repealed with savings), and of certain other regulations: see the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(10).

12 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 7(4). This is without prejudice to the Plant Protection Products Regulations 2005, SI 2005/1435, Sch 3 para 3.

13 See the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 9.

14 See the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 11.

15 Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 12(1)(b), (c). When requested by the enforcing authority to do so, he must make the record, or a copy of the record, so maintained by him available to the enforcing authority within 28 days of the date of the request: reg 12(2). When requested to do so by the enforcing authority, a person who supplies a dangerous preparation must provide to the enforcing authority a copy of any certificate issued by a qualified test house: reg 12(3). As to the meaning of 'enforcing authority' see PARA 571 note 7.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC/(7) SUPPLY ETC OF DANGEROUS CHEMICALS, SUBSTANCES AND PREPARATIONS/573. Prohibitions on supply of other hazardous substances.

**573. Prohibitions on supply of other hazardous substances.**

The manufacture and the use of certain substances are prohibited for all purposes by the Control of Substances Hazardous to Health Regulations 2002<sup>1</sup> and the supply for use of certain other substances is prohibited in prescribed circumstances<sup>2</sup>. The importation into the United Kingdom, other than from another member state, of certain substances and of matches made with white phosphorus is also prohibited and a person may not supply such a substance or article during the course of or for use at work<sup>3</sup>.

The importation and supply for use of certain forms of asbestos are also prohibited<sup>4</sup>.

1    Ie the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARA 619 et seq.

2    See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(1), Sch 2; and PARA 619.

3    See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(2), (3); and PARA 619.

4    See the Control of Asbestos Regulations 2006, SI 2006/2739; and PARAS 630-639.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC/(8) ENFORCEMENT OF REACH REGULATION IN RESPECT OF HEALTH AND SAFETY/574. Enforcing authorities.

## **(8) ENFORCEMENT OF REACH REGULATION IN RESPECT OF HEALTH AND SAFETY**

### **574. Enforcing authorities.**

The European Union Regulation concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH')<sup>1</sup> is enforced in the United Kingdom<sup>2</sup> under the provisions of the REACH Enforcement Regulations 2008<sup>3</sup>.

An enforcing authority<sup>4</sup> must enforce a listed REACH provision<sup>5</sup> where it is named against that provision in the REACH table<sup>6</sup>. The enforcement duty<sup>7</sup> applies to an enforcing authority where enforcement of the listed REACH provision is a function of that authority<sup>8</sup>.

The functions of the Health and Safety Executive and a local (health and safety) authority under the 2008 regulations are to (1) secure the health, safety and welfare of persons at work; (2) protect others against risks to health and safety in connection with activities of persons at work; (3) control the manufacture and placing on the market<sup>9</sup> of articles<sup>10</sup> and substances<sup>11</sup>.

In respect of health and safety enforcement, where a local (health and safety) authority and the Health and Safety Executive are jointly under an enforcement duty, whether or not any other enforcing authority is also under an enforcement duty in respect of the same listed REACH provision, special provisions<sup>12</sup> have effect<sup>13</sup>. In circumstances not so provided for, the Executive must perform the joint duty on behalf of a local (health and safety) authority<sup>14</sup>. In either case, arrangements made as to enforcement may be varied by an enforcement agreement<sup>15</sup>.

The following provisions apply to agreements between an enforcing authority ('A') and another enforcing authority ('B') intended to facilitate the carrying out of an enforcement duty, or part of it<sup>16</sup>. A may agree arrangements with B for B to carry out on A's behalf any matters in relation to an enforcement duty that applies to A<sup>17</sup>. Where an enforcement duty applies to both A and B, they may agree arrangements for performance of that duty to be divided between them in such a way as they consider to be administratively convenient<sup>18</sup>. Such an agreement may be varied in writing by the parties, acting jointly and may be revoked by any party on 60 days' notice in writing to the other party or parties to the agreement<sup>19</sup>.

An enforcing authority must co-operate with (a) other enforcing authorities; (b) a competent authority<sup>20</sup>; (c) the equivalent of an enforcing authority in another member state; and (d) the European Chemicals Agency<sup>21</sup>, where this will facilitate compliance with, or the effective enforcement of, REACH in the European Union<sup>22</sup>. An enforcing authority must disclose to a person referred to in heads (a) to (d) above information it holds in relation to compliance with, or the enforcement of, REACH where it believes that it is reasonable for it to make that disclosure and that the disclosure will facilitate compliance with, or the effective enforcement of, REACH in the European Union<sup>23</sup>. The Commissioners for Revenue and Customs<sup>24</sup> may disclose to an enforcing authority information obtained or held by the Commissioners in exercise of their functions in relation to imports (i) where the Commissioners believe it is appropriate to do so to facilitate the exercise of the duty of an enforcing authority under the 2008 regulations; and (ii) whether or not the information has been requested by the enforcing authority<sup>25</sup>.

It is an offence for a person to contravene a listed REACH provision or cause or permit another person to do so<sup>26</sup>.

1 le European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) (amended by EC Council Regulation 1354/2007 (OJ L 304, 22.11.2007, p 1); and EC Commission Regulation 987/2008 (OJ L268, 9.10.2008, p 14)) concerning the registration, evaluation, authorisation and restriction of chemicals: see the REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(1).

2 As to the meaning of 'United Kingdom' see PARA 305 note 8.

3 le the REACH Enforcement Regulations 2008, SI 2008/2852: see the text and notes 4-26 and PARAS 575-579. As to offences under the regulations see PARA 888. The regulations came into force on 1 December 2008: reg 1.

4 As respects England and Wales, 'enforcing authority' means (1) the Department of the Environment; (2) the Environment Agency; (3) the Health and Safety Executive; (4) a local (consumer safety) authority; (5) a local (health and safety) authority; (6) the Secretary of State; 'local (consumer safety) authority' means (a) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; (b) in England outside Greater London, a county council or, in relation to an area for which there is a district council but no county council, the district council, and the Council of the Isles of Scilly; (c) in Wales, a county council or county borough council; and 'local (health and safety) authority' means (i) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; (ii) in England, outside Greater London, a district council or, in relation to an area for which there is a county council but no district council, the county council, and the Council of the Isles of Scilly; (iii) in Wales, a county council or county borough council: REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(2). As to the Health and Safety Executive see PARA 361 et seq. As to the Secretary of State see PARA 349 et seq.

5 'Listed REACH provision' means a provision of REACH listed in the REACH table; and 'REACH table' means the table in the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 1: reg 2(1). The provisions which are so listed are as follows (Sch 1 Table cols 1, 2):

- 161 (1) REACH art 5: prohibition on manufacture or placing on the market of substances on their own, in preparations or in articles without registration;
- 162 (2) art 7(2) (subject to art 7(6)): requirement on a producer or an importer of an article to notify the European Chemicals Agency;
- 163 (3) art 7(3) (subject to art 7(6)): requirement on a producer or an importer to supply appropriate instructions to the recipient of the article;
- 164 (4) art 8(2) (first sentence): requirement on a representative of a non-community manufacturer to comply with obligations of importers;
- 165 (5) art 9(2): requirement on a manufacturer, importer or producer of articles to notify the European Chemicals Agency of relevant information when that person is seeking to rely on the exemption for product and process orientated research and development;
- 166 (6) art 9(6): requirement on a manufacturer, an importer or a producer of articles to comply with conditions imposed by the European Chemicals Agency;
- 167 (7) art 12(2): requirement on a manufacturer or an importer to notify the European Chemicals Agency of additional information where it reaches the next tonnage threshold;
- 168 (8) art 14(6): requirement on a registrant to identify and apply the appropriate measures adequately to control the risks identified in the chemical safety assessment and where suitable to recommend them in a safety data sheet that is supplied;
- 169 (9) art 14(7): requirement on a registrant to keep a chemical safety report available and up to date;
- 170 (10) art 22(1): requirement on a registrant to update the registrant's registration;
- 171 (11) art 22(2): requirement on a registrant to submit to the European Chemicals Agency an updated registration where this is required by a decision of the European Chemicals Agency;

- 172 (12) art 24(2): requirement on a manufacturer or an importer to notify, in accordance with art 10 (information to be submitted for general registration purposes) and art 12 (information to be submitted depending on tonnage), if the quantity of a notified substance reaches the next tonnage threshold;
- 173 (13) art 26(1): requirement on a potential registrant of a non-phase in substance or a potential registrant of a phase-in substance who has not pre-registered, to inquire of the European Chemicals Agency if the same substance has been registered;
- 174 (14) art 27(1)(a): requirement on a potential registrant to request information on vertebrate animals tests from a previous registrant;
- 175 (15) art 30(6) (subject to art 30(5) (appeals)): failure by owner of a relevant study to provide either proof of the cost of the study or the study itself;
- 176 (16) art 31(1): requirement on a supplier of a substance or a preparation to provide the recipient of that substance or preparation with a safety data sheet compiled in accordance with Annex II (guide to the compilation of safety data sheets);
- 177 (17) art 31(2)-(9): (a) requirement on an actor in the supply chain who has been requested to perform a chemical safety assessment to ensure that information in the safety data sheet is consistent with the information in the assessment; (b) requirement on a supplier to provide a safety data sheet when requested for a preparation which falls within art 31(3); (c) requirement on a supplier to provide a downstream user or a distributor with a safety data sheet when requested for a preparation or dangerous substance which is offered or sold to the general public; (d) requirement on a supplier to provide to the recipient of a substance or a preparation a safety data sheet in the language of the member state concerned; (e) requirement that the safety data sheet contains the information listed in art 31(6); (f) requirement on an actor in the supply chain to place the relevant exposure scenarios in an annex to the safety data sheet in accordance with Annex XI s 3 (general rules for adaptation of the standard testing regime set out in Annexes VII-X); (g) requirement on a downstream user to include the relevant exposure scenarios and use other relevant information from the safety data sheet in its own safety data sheet for identified uses; (h) requirement on a distributor to pass on relevant exposure scenarios and use other relevant information from the safety data sheet when compiling its own data sheet for identified uses; (i) requirement to provide a safety data sheet free of charge either electronically or on paper; (j) requirement on a supplier to update a safety data sheet;
- 178 (18) art 32: (a) duty on a supplier to provide to all recipients to whom supplies have been made within the preceding 12 months an updated safety data sheet; (b) duty on a supplier who does not have to supply a safety data sheet to provide the recipient with the information in art 32(1);
- 179 (19) art 32(2), (3): (a) duty on a supplier to provide information free of charge no later than the time of first delivery of a substance or a preparation after 1 June 2007; (b) duty on a supplier to update the information when required by art 32(1); (c) duty on a supplier to provide to all recipients to whom they have supplied within the preceding 12 months updated information;
- 180 (20) art 33(1): duty on a supplier of an article meeting the criteria in art 57 (substances to be included in Annex XIV) and identified in accordance with art 59(1) to provide the recipient with sufficient information to allow safe use, including as a minimum the name of that substance;
- 181 (21) art 33(2): duty on a supplier of an article meeting the criteria in art 57 (substances to be included in Annex XIV) and identified in accordance with art 59(1) to provide a consumer on request with sufficient information to allow the safe use, including as a minimum the name of that substance;
- 182 (22) art 34: duty on an actor in the supply chain to communicate the information referred to in art 34(a) and (b) to the next actor or distributor up the supply chain;
- 183 (23) art 35: requirement on an employer to provide workers and their representatives with access to information relating to substances or preparations which they may use or be exposed to in the course of their work;
- 184 (24) art 36(1): (a) requirement on a manufacturer, importer, downstream user or distributor to keep available for at least ten years after it last manufactured, imported, supplied or used the substance or preparation, all the information it requires to carry out its duties under REACH; (b) requirement on a manufacturer, importer, downstream user or distributor to submit or make

available information to a competent authority or the European Chemicals Agency when requested to do so;

- 185 (25) art 36(2): requirement on a party responsible for liquidating the registrant's, downstream user's or distributor's undertaking or assuming responsibility for the placing on the market of the substance or preparation concerned, to comply with art 36(1);
- 186 (26) art 37(3): (a) requirements providing when a manufacturer, importer or downstream user must comply with art 14 (chemical safety report and duty to apply and recommend risk reduction measures) for registered substances; (b) requirements providing when a manufacturer, importer or downstream user must comply with art 14 for a phase-in substance; (c) requirement on a manufacturer, importer or downstream user to provide the European Chemicals Agency and downstream users with reasons why a use identified by a downstream user cannot be included in the chemical safety report; (d) prohibition on a manufacturer, importer or downstream user supplying a downstream user with a substance without stating in the information referred to in art 31 (requirements for safety data sheets) and art 32 (duty to communicate information down the supply chain for substances on their own or in preparations for which a safety data sheet is not required) the reasons why a use is not an identified-use; (e) requirement on a manufacturer or an importer to include the use notified under art 37(2) in the update of the registration under art 22(1)(d);
- 187 (27) art 37(4): requirement on a downstream user to prepare a chemical safety report in accordance with Annex XII (general provisions for downstream users to assess substances and prepare chemical safety reports) for any use outside of the conditions described in an exposure scenario, a use and exposure category in a safety data sheet or for any use that a supplier advises against;
- 188 (28) art 37(5) (read in association with art 39(1)): requirement on a downstream user to identify and apply appropriate measures to adequately control risks identified in (a) a safety data sheet; (b) its own chemical safety assessment; or (c) any information received in accordance with art 32 (duty to communicate information down the supply chain for substances on their own or in preparations for which a safety data sheet is not required);
- 189 (29) art 37(5) (read in association with art 39(1)): requirement on a downstream user to recommend, where suitable, measures adequately to control the risks identified in (a) a safety data sheet supplied to it; (b) its own chemical safety assessment; or (c) any information received in accordance with art 32;
- 190 (30) art 37(6): requirement on a downstream user to identify and apply appropriate risk management measures that are needed to ensure that the risks to human health and the environment are adequately controlled;
- 191 (31) art 37(7) (read in association with art 39(1)): requirement on a downstream user to keep its chemical safety report up to date and available;
- 192 (32) art 38(1) (read in association with art 39(2)): requirement on a downstream user to report information in art 38(2) to the European Chemicals Agency before commencing or continuing with a particular use of a substance that has been registered by an actor up the supply chain;
- 193 (33) art 38(3): requirement on a downstream user to update the information provided in art 38(2);
- 194 (34) art 38(4) (read in association with art 39(2)): requirement on a downstream user to report to the European Chemicals Agency if its classification of a substance is different to that of its supplier;
- 195 (35) art 41(4): requirement on a registrant to submit information required to the European Chemicals Agency;
- 196 (36) art 46(2): requirement on a registrant to submit further information in accordance with a decision prepared by the competent authority;
- 197 (37) art 49(a): requirement on a registrant to submit further information as requested by the competent authority in relation to a risk identified for on-site isolated intermediates;
- 198 (38) art 50(4): requirement on a registrant to provide, in accordance with art 46 (requests for further information and check of information submitted), further information;

- 199 (39) art 56(1) (subject to art 56(4)-(6)): prohibition on a manufacturer, importer or downstream user placing a substance on the market for a use or use it itself if that substance is included in Annex XIV (list of substances subject to authorisation) unless art 56(1)(a), (b), (c), (d) or (e) are satisfied;
- 200 (40) art 56(2) (subject to art 56(4)-(6)): prohibition on a downstream user using a substance otherwise than in accordance with the conditions of an authorisation granted to an actor up that actor's supply chain for that use;
- 201 (41) art 60(10): requirement on a holder of an authorisation to ensure that the exposure is reduced to as low a level as is technically and practically possible;
- 202 (42) art 65: requirement on a holder of an authorisation or a downstream user to include the authorisation number on the label before placing the substance or preparation on the market for an authorised use;
- 203 (43) art 66(1): requirement on a downstream user using a substance in accordance with art 56(2) to notify the European Chemicals Agency within three months of the first supply;
- 204 (44) art 67(1) (subject to art 67(2)): prohibition on the manufacture, placing on the market or use of a substance on its own, in a preparation or in an article for which Annex XVII (restrictions on the manufacture, placing on the market and use of certain dangerous substances, preparations and articles) contains a restriction unless the manufacture, placing on the market or use complies with the conditions of that restriction;
- 205 (45) art 113(1): requirement on a manufacturer, producer of articles or importer, or group of manufacturers, group of producers of articles or group of importers, who place on the market a substance within the scope of art 112 (scope), to provide the information listed in art 113(1)(a), (b), (c), (d) or (e) unless submitted with a registration;
- 206 (46) art 113(3): requirement on a party notifying under art 113(1) to update the information in the circumstances set out in art 113(3)(a) or (b).

6 REACH Enforcement Regulations 2008, SI 2008/2852, reg 3(1). The duty in reg 3(1) is subject to reg 3(3)-(8) and reg 6 (health and safety enforcement: see the text and notes 12-15): reg 3(2). Except in relation to an offshore installation or a local (consumer safety) authority or a local (health and safety) authority, the enforcement duty applies to an enforcing authority in the relevant part or parts of the United Kingdom shown at the head of the column in which the enforcing authority is named in the REACH table: reg 3(4). For a local (consumer safety) authority or a local (health and safety) authority, the enforcement duty applies to the area of that authority: reg 3(6). For England and Wales the enforcing authority is (1) in respect of the provisions cited in note 5 heads (1)-(5), (7), (9)-(19), (22), (24)(b), (25), (26), (31), (34)-(38), (43), (45), (46), the Health and Safety Executive; (2) in respect of the provisions cited in note 5 heads (6), (24)(a), (39), (44), the Health and Safety Executive, the Environment Agency, local (health and safety) authorities and local (consumer safety) authorities; (3) in respect of the provisions cited in note 5 heads (8), (27)-(30), (32), (33), (40), (41), the Health and Safety Executive, the Environment Agency and local (health and safety) authorities; (4) in respect of the provisions cited in note 5 heads (20), (21), (23), the Health and Safety Executive and local (health and safety) authorities; and (5) in respect of the provisions cited in note 5 head (42), the Health and Safety Executive, local (consumer safety) authorities and local (health and safety) authorities: Sch 1 Table col 3.

In relation to an offshore installation, the enforcement duty applies, for an installation in relevant waters (except such waters adjacent to Northern Ireland), to the Health and Safety Executive and, except in Scottish controlled waters, to the Secretary of State, where they are named under the column heading 'Offshore Installations' in the REACH table: reg 3(5)(a). In relation to offshore installations, the enforcing authority is (a) in respect of the provisions cited in note 5 heads (1)-(5), (7), (9)-(23), (24)(b), (25), (26), (31), (34)-(38), (42), (43), (45), (46), the Health and Safety Executive; and (b) in respect of the provisions cited in note 5 heads (6), (8), (24)(a), (27)-(30), (32), (33), (39)-(41), (44), the Health and Safety Executive and the Secretary of State: Sch 1 Table col 6. 'Offshore installation' has the meaning given in the Petroleum Act 1998 s 44(1); and 'Scottish controlled waters' means any waters which are controlled waters within the meaning of the Control of Pollution Act 1974 s 30A(1) (which applies to Scotland only and is outside the scope of this work): REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(2). As to the meaning of 'United Kingdom' see PARA 305 note 8.

7 'Enforcement duty' means a duty placed on an enforcing authority under the REACH Enforcement Regulations 2008, SI 2008/2852, reg 3: reg 2(2).

8 REACH Enforcement Regulations 2008, SI 2008/2852, reg 3(7). The enforcement duty commenced (1) except in relation to REACH art 67 (see note 5 head (44), on 1 December 2008; (2) in relation to art 67, on 1 June 2009: REACH Enforcement Regulations 2008, SI 2008/2852, reg 3(3). The functions of an enforcing authority for the purposes of the 2008 regulations are set out in Sch 2: reg 3(8).

9 'Placing on the market' means supplying or making available, whether in return for payment or free of charge, to a third party; import is deemed to be placing on the market; and 'import' means the physical introduction into the customs territory of the Community; European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 3(12), (10); REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(3).

10 'Article' means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition; European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 3(3); REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(3).

11 REACH Enforcement Regulations 2008, SI 2008/2852, reg 3(8), Sch 2 para 2. As to the functions of other enforcement agencies see Sch 2 paras 1, 3-5. 'Substance' means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition; European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 3(1); REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(3).

12 le the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3: see PARA 575.

13 REACH Enforcement Regulations 2008, SI 2008/2852, reg 6(1), (2), (5).

14 REACH Enforcement Regulations 2008, SI 2008/2852, reg 6(3).

15 REACH Enforcement Regulations 2008, SI 2008/2852, reg 6(4). An enforcement agreement may be made under reg 5. See the text and notes 16-19.

16 REACH Enforcement Regulations 2008, SI 2008/2852, reg 5(1).

17 REACH Enforcement Regulations 2008, SI 2008/2852, reg 5(2).

18 REACH Enforcement Regulations 2008, SI 2008/2852, reg 5(3). An agreement in respect of the matters in reg 5(2) or (3): (1) may deal with more than one listed REACH provision; (2) must be in writing; (3) must give sufficient particulars of the matters to which it relates; and (4) may be made subject to limitations and conditions: reg 5(4). For an example see the draft Memorandum of Understanding for the Enforcement of REACH (HSE/08/33 Appendix 5).

19 REACH Enforcement Regulations 2008, SI 2008/2852, reg 5(5).

20 'Competent authority' has the same meaning it has in REACH and in respect of the United Kingdom the authorities are (1) in England, the Secretary of State; (2) in Scotland, the Scottish Ministers; (3) in Wales, the Welsh Ministers; (4) in Northern Ireland, the Department of Enterprise, Trade and Investment and the Department of the Environment acting alone or jointly; and (5) in relation to matters outside the competence of a devolved administration or the Assembly, the Secretary of State; and 'devolved administration or the Assembly' means the Scottish Ministers, the Welsh Ministers or the Northern Ireland Assembly: REACH Enforcement Regulations 2008, SI 2008/2852, reg 2(2).

21 The European Chemicals Agency is established by European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 75(1). See generally Title X (arts 75-111).

22 REACH Enforcement Regulations 2008, SI 2008/2852, reg 4(1).

23 REACH Enforcement Regulations 2008, SI 2008/2852, reg 4(2).

24 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

25 REACH Enforcement Regulations 2008, SI 2008/2852, reg 4(3).

26 REACH Enforcement Regulations 2008, SI 2008/2852, reg 11(1), (2). In the case of a contravention of REACH art 67, it is an offence only after 1 June 2009: REACH Enforcement Regulations 2008, SI 2008/2852, reg 11(2). A person guilty of an offence under reg 11 is liable, on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months, or both, and on conviction on indictment, to a fine or imprisonment not exceeding two years, or both: reg 12. As to the statutory maximum see PARA 853 note 9.



## **UPDATE**

### **574 Enforcing authorities**

NOTE 1--Regulation 1907/2006 further amended by European Parliament and EC Council Regulation 1272/2008 on classification, labelling and packaging of dangerous substances and mixtures (OJ L353, 31.12.2008 p 1): arts 57 (from 20 January 2009), 58 (from 1 December 2010), 59 (from 1 June 2015); EC Commission Regulation 134/2009 (OJ L46, 17.2.2009, p 3); EC Commission Regulation 552/2009 (OJ L164, 26.6.2009, p 7).

NOTE 5--Head (17)(f). Regulation 1907/2006 Annex XI s 3 replaced: EC Commission Regulation 134/2009 (OJ L46, 17.2.2009, p 3). Head (44). Annex XVII amended: EC Commission Regulation 552/2009 (OJ L164, 26.6.2009, p 7).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC/(8) ENFORCEMENT OF REACH REGULATION IN RESPECT OF HEALTH AND SAFETY/575. Health and safety enforcement.

### **575. Health and safety enforcement.**

Subject to specified exceptions<sup>1</sup>, where a local (health and safety) authority<sup>2</sup> and the Health and Safety Executive<sup>3</sup> are jointly under an enforcement duty<sup>4</sup>, whether or not any other enforcing authority<sup>5</sup> is also under an enforcement duty in respect of the same listed REACH provision<sup>6</sup> a local (health and safety) authority must perform the joint enforcement duty on behalf of the Executive where the main activity carried on in non-domestic premises is as follows<sup>7</sup>:

- 811 (1) the sale of goods<sup>8</sup>, or the storage of goods for retail or wholesale distribution, except (a) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises<sup>9</sup>, an airport or a railway<sup>10</sup>; (b) where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply<sup>11</sup>; (c) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas<sup>12</sup>;
- 812 (2) the display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale;
- 813 (3) office activities<sup>13</sup>;
- 814 (4) catering services;
- 815 (5) the provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers;
- 816 (6) consumer services<sup>14</sup> provided in a shop except dry cleaning or radio and television repairs;
- 817 (7) cleaning (wet or dry) in coin operated units in launderettes and similar premises;
- 818 (8) the use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984, a physiotherapist, an osteopath or a chiropractor<sup>15</sup>;
- 819 (9) the practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where the main activity is the exhibition of a cave to the public;
- 820 (10) the hiring out of pleasure craft<sup>16</sup> for use on inland waters;
- 821 (11) the care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity<sup>17</sup> or veterinary surgery<sup>18</sup>;
- 822 (12) the activities of an undertaker, except where the main activity is embalming or the making of coffins;
- 823 (13) church worship or religious meetings;
- 824 (14) the provision of car parking facilities within the perimeter of an airport;
- 825 (15) the provision of child care, or playgroup or nursery facilities<sup>19</sup>.

Subject to specified exceptions<sup>20</sup>, the Health and Safety Executive must perform the joint enforcement duty on behalf of a local (health and safety) authority in relation to the following<sup>21</sup>:

- 826 (i) any activity in a mine<sup>22</sup> or quarry<sup>23</sup> other than a quarry in respect of which notice of abandonment has been given<sup>24</sup>;
- 827 (ii) any activity in a fairground<sup>25</sup>;
- 828 (iii) any activity in premises occupied by a radio, television or film<sup>26</sup> undertaking in which the activity of broadcasting, recording or filming is carried on, and the activity of broadcasting, recording or filming wherever carried on;
- 829 (iv) construction work if (A) the project which includes the work is notifiable within the meaning of the Construction (Design and Management) Regulations 2007<sup>27</sup>; (B) the whole or part of the work contracted to be undertaken by the contractor at the premises is to the external fabric or other external part of a building or structure; (C) it is carried out in a physically segregated area of the premises<sup>28</sup>, the activities normally carried out in that area have been suspended for the purpose of enabling the construction work to be carried out, the contractor has authority to exclude from that area persons who are not attending in connection with the carrying out of the work and the work is not the maintenance of insulation on pipes, boilers or other parts of heating or water systems or its removal from them;
- 830 (v) the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting<sup>29</sup>;
- 831 (vi) the installation, maintenance or repair of electricity systems<sup>30</sup>;
- 832 (vii) work with ionising radiations<sup>31</sup> except work in one or more of the categories not required to be notified under the Ionising Radiations Regulations 1999<sup>32</sup>;
- 833 (viii) the use of ionising radiations for medical exposure<sup>33</sup>;
- 834 (ix) any activity in premises occupied by a radiography undertaking in which there is carried on any work with ionising radiations;
- 835 (x) agricultural activities, and any activity at an agricultural show which involves the handling of livestock<sup>34</sup> or the working of agricultural equipment;
- 836 (xi) any activity on board a sea-going ship;
- 837 (xii) any activity in relation to a ski slope, ski lift, ski tow or cable car;
- 838 (xiii) fish, maggot and game breeding except in a zoo<sup>35</sup>;
- 839 (xiv) any activity in relation to a pipeline<sup>36</sup>;
- 840 (xv) the operation of (A) a guided bus system<sup>37</sup>; or (B) any other system of guided transport<sup>38</sup>, other than a railway, that employs vehicles which for some or all of the time when they are in operation travel along roads.
- 841 (xvi) the operation of a trolley vehicle system<sup>39</sup>;
- 842 (xvii) the manufacture<sup>40</sup> of ammonium nitrate blasting intermediate<sup>41</sup>.

The Executive must perform the joint enforcement duty on behalf of a local (health and safety) authority in relation to (aa) the tunnel system<sup>42</sup>; (bb) an offshore installation<sup>43</sup>; (cc) a building or construction site, that is to say, premises where the only activities being undertaken are construction work and activities for the purposes of or in connection with such work; (dd) the campus of a university, college, school or similar educational establishment; (ee) a hospital<sup>44</sup>.

However, where any non-domestic premises are occupied by more than one occupier, the following provisions apply to the common parts<sup>45</sup>. To the extent the Executive must perform a joint enforcement duty on behalf of a local (health and safety) authority under the provisions above for all other parts of the premises, it must also do so for the common parts of those premises, and to the extent a local (health and safety) authority must perform a joint enforcement duty on behalf of the Executive under the provisions above for all other parts of the premises, it must also do so for the common parts of those premises<sup>46</sup>. In relation to land within the perimeter of an airport which consists of common parts, for those parts not within a building or to which passengers are admitted but other members of the public are not admitted, the Executive must perform the joint enforcement duty on behalf of a local (health

and safety) authority, and for the remaining common parts, a local (health and safety) authority must perform the joint enforcement duty on behalf of the Executive<sup>47</sup>.

1     le subject to the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 4. See the text and notes 44-46.

2     As to the meaning of 'local (health and safety) authority' see PARA 574 note 4.

3     See the REACH Enforcement Regulations 2008, SI 2008/2852, reg 6(5), Sch 3 Pt 1 para 1(f). As to the Health and Safety Executive see PARA 361 et seq.

4     As to the meaning of 'enforcement duty' see PARA 574 note 7.

5     As to the meaning of 'enforcing authority' see PARA 574 note 4.

6     As to the meaning of 'listed REACH provision' see PARA 574 note 5.

7     REACH Enforcement Regulations 2008, SI 2008/2852, reg 6(1), (2), Sch 3 Pt 2 para 2. Where a vehicle is parked in connection with the sale of food, drink or other articles, the vehicle, including its pitch, must be regarded as separate premises for the purposes of Sch 3 Pt 2 para 2; and where any non-domestic premises are occupied by more than one occupier each part separately occupied must be regarded as being separate premises: Sch 3 Pt 2 para 3(a), (b). As to the meaning of 'article' see PARA 574 note 10.

8     For these purposes, where the main activity carried on in premises is the sale and fitting of motor vehicle tyres, exhausts, windscreens or sunroofs, the main activity must be regarded as the sale of goods: Sch 3 Pt 2 para 3(c).

9     'Dock premises' has the meaning assigned to it by the Docks Regulations 1988, SI 1988/1655, reg 2(1) (see PARA 706 note 4): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(d).

10    'Railway' means any system of transport the operation of which is specified in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(2) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(r).

11    'Preparation dangerous for supply' means a preparation which is in one or more of the categories of danger in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, Sch 1 (see PARA 571): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(p) (amended by SI 2009/716).

12    'Gas' has the meaning assigned to it by the Gas Act 1986 s 48 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 802): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(h).

13    'Office activities' includes any activity for the purposes of administration, clerical work, handling money, telephone and telegraph operating and the production of computer software by the use of computers; and for this purpose 'clerical work' includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(n).

14    'Consumer services' means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(c).

15    See generally **MEDICAL PROFESSIONS**.

16    'Pleasure craft' has the meaning assigned to it by the Docks Regulations 1988, SI 1988/1655, reg 2(1) (see PARA 706 note 1): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(o).

17    'Agricultural activities' (1) includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, forestry, the use of land as grazing land, market gardens and nursery grounds and the preparation of land for agricultural use; (2) does not include such activities at a garden centre or other shop; but 'livestock breeding and keeping' does not include activities the main purpose of which is entertainment: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(a).

18    'Veterinary surgery' has the meaning assigned to it by the Veterinary Surgeons Act 1966 s 27 (see PARA 372 note 27): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(u).

19 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 2 para 2(a)-(o).

20 le subject to the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 4.

21 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 1. The Executive must perform the joint enforcement duty on behalf of a local (health and safety) authority (1) in relation to a specified body; (2) in relation to the officers or servants of such a body; or (3) in relation to any part of premises occupied by such a body: Sch 3 Pt 3 para 4. In England and Wales, the specified bodies are (a) a local authority being (i) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; (ii) in England outside Greater London, a county council or a district council, and the Council of the Isles of Scilly; (iii) in Wales, a county council or county borough council; (b) a parish council in England or a community council in Wales; (c) a police authority or the Receiver for the Metropolitan Police District; (d) a fire and rescue authority under the Fire and Rescue Services Act 2004; (e) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964; (f) a service authority of a visiting force within the meaning of the Visiting Forces Act 1952 s 12; (g) the United Kingdom Atomic Energy Authority; (h) the Crown, except in relation to any part of any premises occupied by the Health and Safety Executive: Sch 3 Pt 3 para 5.

22 'Mine' has the meaning assigned to it by the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1) but, notwithstanding s 180(5), does not include any railway serving the mine unless and to the extent that the railway is located within the curtilage of the mine: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(m).

23 'Quarry' has the meaning assigned to it by the Quarries Regulations 1999, SI 1999/2024, reg 3 (see PARA 838): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(q).

24 le under the Quarries Regulations 1999, SI 1999/2024, reg 45(1).

25 'Fairground' means such part of premises as is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered children's playground equipment, swimming pool slide, go-kart, or plant designed to be used by members of the public for entertainment purposes for bouncing upon: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(g).

26 For this purpose 'film' includes video: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 1(c).

27 le within the meaning of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(3) (see PARA 674 note 8).

28 For these purposes, reference to a physically segregated area does not include an area segregated only in order to prevent the escape of asbestos; and 'asbestos' has the meaning assigned to it in relation to Great Britain, by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1) (see PARA 630 note 1): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 2.

29 'Gas fitting' has the meaning assigned to it by the Gas Act 1986 s 48 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 861); and 'work' in relation to a gas fitting has the meaning assigned to it by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (see PARA 609 note 1): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(i), (v)

30 'Electricity system' does not include (1) the consumer's installation within the meaning of the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 3(1) (it is submitted that reg 1(5) should be referred to, which defines 'consumer's installation' as meaning the electric lines situated upon the consumer's side of the supply terminals together with any equipment permanently connected or intended to be permanently connected thereto on that side: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1153); (2) the electric lines situated upon the consumer's side of the supply terminals together with any apparatus or equipment permanently connected or intended to be permanently connected thereto: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(e).

31 'Ionising radiations' has the meaning assigned to it in relation to Great Britain by the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1) (see PARA 648 note 1): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 3.

32 le one or more of the categories set out in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 1 (see PARA 648 note 12).

33 'Medical exposure' in relation to ionising radiations has the meaning assigned to it in relation to Great Britain by the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1) (see **PARA 648** note 4): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 3.

34 'Livestock' means any creature kept for the production of food, wool, skins or fur or for the purpose of any agricultural activity: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(l).

35 'Zoo' has the meaning assigned to it in relation to Great Britain by the Zoo Licensing Act 1981 s 1(2) (see **ANIMALS** vol 2 (2008) **PARA 944**): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(w).

36 le within the meaning of the Pipelines Safety Regulations 1996, SI 1996/825, reg 3 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) **PARA 611**).

37 'Guided bus system' means a system of transport, used wholly or mainly for the carriage of passengers, that employs buses which for some or all of the time when they are in operation (1) travel along roads; and (2) are guided (whether while on the road or at other times) by means of (a) apparatus, a structure or other device which is fixed and not part of the bus; or (b) a guidance system which is automatic: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(j). 'Road', in England and Wales, means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: Sch 3 Pt 1 para 1(s).

38 'Guided transport' means a system of transport, used wholly or mainly for the carriage of passengers, employing vehicles which for some or all of the time when they are in operation are guided by means of (1) rails, beams, slots, guides or other apparatus, structures or devices which are fixed and not part of the vehicle; or (2) a guidance system which is automatic; and for this purpose 'vehicle' includes a mobile traction unit: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(k).

39 'Trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 1 para 1(t).

40 le under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see **EXPLOSIVES**).

41 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 1(a)-(i), (k)-(n), (p), (q), (s), (t).

42 le within the meaning it would have in the Channel Tunnel Act 1987 s 1(7) if the words 'to be' did not appear.

43 As to the meaning of 'offshore installation' see **PARA 574** note 6.

44 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 3 para 7.

45 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 4 para 1. 'Common parts' means those parts of premises used in common by, or for providing common services to or common facilities for, the occupiers of the premises: Sch 3 Pt 1 para 1(b).

46 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 4 para 2.

47 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 Pt 4 para 3.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/5. COMMERCIAL SUPPLY OF EQUIPMENT, PRODUCTS ETC/(8) ENFORCEMENT OF REACH REGULATION IN RESPECT OF HEALTH AND SAFETY/576. Exemptions.

## 576. Exemptions.

A person is exempt from compliance with a listed REACH provision<sup>1</sup> if that person either has the benefit of a defence exemption certificate<sup>2</sup> made by the Secretary of State<sup>3</sup> in respect of that provision or can demonstrate that the appropriate authorities of another member state have exempted that person from compliance in the interests of defence<sup>4</sup>.

A person who markets or uses leaded paint does not breach the REACH restriction on the marketing and use of leaded paint<sup>5</sup> where that person complies with the relevant provisions<sup>6</sup> of the REACH Enforcement Regulations 2008<sup>7</sup>.

1 As to the meaning of 'listed REACH provision' see PARA 574 note 5.

2 As to defence exemption certificates see the REACH Enforcement Regulations 2008, SI 2008/2852, reg 7(2), Sch 4. The Secretary of State may decide that it is necessary in the interests of defence for a person to be exempt from compliance with a listed REACH provision: Sch 4 para 1. The Secretary of State may decide to apply the exemption (1) to a person, including the Secretary of State, or a category of persons; (2) to one or more provision at the same time; (3) prospectively; (4) for a limited or unlimited period; (5) generally or to a particular case; (6) subject to such limitations and conditions as the Secretary of State sees fit: Sch 4 para 2. A decision of the Secretary of State to apply the exemption must be evidenced in writing by a certificate: Sch 4 para 3. A certificate (a) must contain sufficient particulars of the persons to whom, and the matters to which, it relates; and (b) may be varied or revoked in writing: Sch 4 para 4. The Secretary of State may provide to a person who has the benefit of a certificate, the certificate, a copy of it or a copy of a relevant extract of the certificate: Sch 4 para 5. A person who claims the benefit of a certificate must, when reasonably requested to do so, produce the certificate, a copy of it made by the Secretary of State or a copy made by the Secretary of State of a relevant extract of the certificate to (i) an enforcing authority; (ii) a competent authority; (iii) the equivalent of an enforcing authority of another member state; (iv) the European Chemicals Agency: Sch 4 paras 6, 7. Unless the contrary is proved, a certificate, a copy of it made by the Secretary of State, or a copy made by the Secretary of State of a relevant extract of the certificate, is conclusive evidence of the matters to which it relates: Sch 4 para 8. As to the meaning of 'enforcing authority' see PARA 574 note 4. As to the meaning of 'competent authority' see PARA 574 note 20. As to the European Chemicals Agency see PARA 574 note 21.

It is an offence for a person when subject to Sch 4 para 6: (A) to provide a false certificate or copy; or (B) to fail to provide when requested, as appropriate, the defence exemption certificate, a copy of the certificate made by the Secretary of State or a copy of an extract of the certificate made by the Secretary of State, or cause or permit another person to do so: reg 11(3). The penalty for a person guilty of an offence under reg 11 is, on summary conviction, a fine not exceeding the statutory maximum or imprisonment not exceeding three months, or both, and on conviction on indictment, a fine or imprisonment not exceeding two years, or both: reg 12. As to the statutory maximum see PARA 853 note 9.

3 As to the Secretary of State see PARA 349 et seq.

4 REACH Enforcement Regulations 2008, SI 2008/2852, reg 7(1).

5 Ie provided for by European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) art 67: see PARA 574 note 5 head (44).

6 Ie the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 5 (marketing and use of leaded paint). 'Leaded paint' means paint containing lead carbons or lead sulphates listed at points 16 and 17 of Annex XVII of REACH: REACH Enforcement Regulations 2008, SI 2008/2852, reg 8, Sch 5 Pt 1 para 8. As to the meaning of 'REACH' see PARA 571 note 4. A person may market leaded paint if it is marketed with a view to its use as set out in Sch 5 Pt 1 para 2: Sch 5 Pt 1 para 1. A person may use leaded paint if the paint is used in the restoration or maintenance of (1) historic buildings or their interiors; (2) scheduled monuments; or (3) fine or decorative works of art, in each case where it is required to restore or maintain historic textures or finishes: Sch 5 Pt 1 para 1. In relation to England and Wales, 'historic building' means a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5) (see **TOWN AND COUNTRY PLANNING** vol 46(3)).

(Reissue) PARA 1091) which is classified as Grade I or Grade II (starred); and 'scheduled monument' has the same meaning as it has in the Ancient Monuments and Archaeological Areas Act 1979 s 1(11) (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1010): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 5 Pt 1 para 8.

A person who intends to use leaded paint must (a) where that person intends to obtain the paint from a supplier of such paint, provide to that supplier a relevant declaration; or (b) in any other case, provide to the competent body a relevant declaration and comply with Sch 5 Pt 1 para 6: Sch 5 Pt 1 para 3. A person who provides a relevant declaration to the competent body must not use the paint earlier than three weeks after providing the relevant declaration to the competent body or if that person receives a notice from the competent body that it is not satisfied with the content of the relevant declaration: Sch 5 Pt 1 para 6. A person may supply leaded paint if that person complies with Sch 5 Pt 1 para 5: Sch 5 Pt 1 para 4. A person who receives a relevant declaration pursuant to head (a) above and agrees to supply leaded paint to the intended user stated in the declaration must send the declaration to the competent body with a notification and must not supply the paint earlier than three weeks after providing the relevant declaration and notification to the competent body or if that person receives a notice from the competent body that it is not satisfied with the content of the relevant declaration: Sch 5 Pt 1 para 5. If a competent body is not satisfied with the content of a relevant declaration or notification, it must (i) within two weeks of receipt, give notice to that effect in writing to the person from whom it was received with reasons for its decision; and (ii) as soon as possible, provide a copy of that notice to such enforcing authorities as the competent body believes are appropriate: Sch 5 Pt 1 para 7. 'Competent body' means English Heritage if the historic building, scheduled monument or work of art is in England and Cadw if the historic building, scheduled monument or work of art is in Wales; 'relevant declaration' means a written declaration that contains the matters in Sch 5 Pt 2; and 'notification' means a written notification that contains the matters in Sch 5 Pt 3: Sch 5 Pt 1 para 8. Those Parts are not set out in detail in this work. On and after 1 June 2009, it is an offence for a person to contravene Sch 5 Pt 1 para 5(b) or 6 or cause or permit another person to do so: reg 11(4). As to the penalty see note 2.

7 REACH Enforcement Regulations 2008, SI 2008/2852, reg 8.

## **UPDATE**

### **576 Exemptions**

NOTE 6--Regulation 1907/2006 (REACH) Annex XVII points 16, 17 amended: EC Commission Regulation 552/2009 (OJ L164, 26.6.2009, p 7).



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### **577. Enforcement: powers of entry.**

Specific powers of enforcement are given to the various enforcing authorities<sup>1</sup> under the REACH Enforcement Regulations 2008<sup>2</sup>. An enforcing authority may authorise in writing such persons who appear suitable to act on its behalf ('authorised persons'<sup>3</sup>), subject to any limitations or conditions as the enforcing authority sees fit<sup>4</sup>. Where a person has been authorised by an enforcing authority under a statutory provision relevant to that authority<sup>5</sup> and unless the enforcing authority provides to the contrary, that person is an authorised person for these purposes in respect of that authority<sup>6</sup>.

Where the Health and Safety Executive or a local (health and safety) authority is the enforcing authority, the powers of an authorised person are:

- 843 (1) at any reasonable time (or, in a situation which the authorised person believes is or may be dangerous, at any time) to enter any premises which that person has reason to believe it is necessary to enter;
- 844 (2) to be accompanied by a constable if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of that person's duty;
- 845 (3) without prejudice to head (2) above, on entering any premises by virtue of head (1) above to (a) be accompanied by any other person duly authorised by the authorised person's enforcing authority; and (b) take any equipment or materials required for any purpose for which the power of entry is being exercised;
- 846 (4) to make such examination and investigation as may in any circumstances be necessary for the purpose for which the power is being exercised;
- 847 (5) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything therein, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under head (4) above;
- 848 (6) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under head (4) above;
- 849 (7) to take samples of any thing found in any premises which the authorised person has power to enter and of the atmosphere in or in the vicinity of any such premises;
- 850 (8) in the case of any thing found in any premises which the authorised person has power to enter and which appears to be in contravention of a listed REACH provision<sup>7</sup>, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary)<sup>8</sup>;
- 851 (9) in the case of any such thing as is mentioned in head (8) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely (a) to examine it and do to it anything which the authorised person has power to do under head (8) above; (b) to ensure that it is not tampered with before the authorised person's examination of it is completed; (c) to ensure that it is available for use as evidence in any proceedings for an offence under the 2008 regulations<sup>9</sup>;

- 852 (10) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under head (4) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of that person's answers<sup>10</sup>;
- 853 (11) to require the production of, inspect, and take copies of or of any entry in (a) any books or documents which by virtue of any of the listed REACH provisions are required to be kept; and (b) any other books or documents which it is necessary for the authorised person to see for the purposes of any examination or investigation under head (4) above;
- 854 (12) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred upon the authorised person by the 2008 regulations<sup>11</sup>;
- 855 (13) to seize and cause to be rendered harmless (whether by destruction or otherwise) any thing which is found by the authorised person in any premises and which the authorised person has reasonable cause to believe that, in the circumstances in which it is found is a cause of imminent danger of serious personal injury<sup>12</sup>;
- 856 (14) any other power which is necessary for the purpose of carrying out the enforcement duty<sup>13</sup>.

Nothing in these provisions compels the production by any person of a document which, except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the county court or High Court<sup>14</sup>. Where (i) an action has been brought against an authorised person in respect of an act done in the execution or purported enforcement of a listed REACH provision; (ii) the circumstances are such that the authorised person is not legally entitled to require an indemnity from the Executive; and (iii) the Executive is satisfied that the authorised person honestly believed that the act complained of was within that person's powers and that the duty of an authorised person required or entitled that act, the Executive may indemnify the authorised person against the whole or part of any damages and costs which that person may be ordered to pay or may have incurred<sup>15</sup>.

To facilitate the exercise of a duty of an enforcing authority under the 2008 regulations, an officer of Revenue and Customs may detain, for not more than two working days<sup>16</sup>, an article or substance which has been imported<sup>17</sup>. Anything detained must be dealt with in such manner as the Commissioners for Revenue and Customs may direct<sup>18</sup>.

1 As to the meaning of 'enforcing authority' see PARA 574 note 4.

2 See the REACH Enforcement Regulations 2008, SI 2008/2852, reg 9(1), Sch 6. The powers of the Health and Safety Executive and local (health and safety) authorities are contained in Sch 6 Pt 2. As to the Health and Safety Executive see PARA 361 et seq. As to the meaning of 'local (health and safety) authority' see PARA 574 note 4.

3 'Authorised person' means a person authorised by an enforcing authority under the REACH Enforcement Regulations 2008, SI 2008/2852, reg 10: reg 2(2).

4 REACH Enforcement Regulations 2008, SI 2008/2852, reg 10(1).

5 I.e a provision listed in the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 7 (authorisations). Relevant authorisations in respect of the Health and Safety Executive or a local (health and safety) authority in Great Britain are authorisations made under the Health and Safety at Work etc Act 1974 s 19 (appointment of

inspectors) (see PARA 375): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 7 para 3. In respect of the Secretary of State, a relevant authorisation is an authorisation made under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16 (appointment of inspectors) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 601). As to the Secretary of State see PARA 349 et seq.

6 REACH Enforcement Regulations 2008, SI 2008/2852, reg 10(2).

7 As to the meaning of 'listed REACH provision' see PARA 574 note 5.

8 Where an authorised person proposes to exercise the power conferred by the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 1(h) (head (8) in the text) and if requested by a person who at the time is present in and has responsibilities in relation to those premises, the authorised person must cause anything which is to be done by virtue of that power to be done in the presence of that other person unless the authorised person considers that would be prejudicial to the safety of any person: Sch 6 Pt 2 para 2. Before exercising the power conferred by Sch 6 Pt 2 para 1(h), an authorised person must consult such persons as appear to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do under that power: Sch 6 Pt 2 para 3.

9 Ie under the REACH Enforcement Regulations 2008, SI 2008/2852, reg 11 or 13 (see PARA 888). Where under the power conferred by Sch 6 Pt 2 para 1(i) (head (9) in the text) an authorised person takes possession of any thing found in any premises, the authorised person must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that thing sufficient to identify it and stating that the authorised person has taken possession of it under that power; and before taking possession of any such thing under that power an authorised person must, if it is practicable to do so, take a sample and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it: Sch 6 Pt 2 para 4.

10 No answer given by a person in pursuance of a requirement imposed under the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 1(j) (head (10) in the text) is admissible in evidence against that person or the spouse or civil partner of that person in any proceedings: Sch 6 Pt 2 para 5.

11 Ie by the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2.

12 Before the power in the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 1(m) (head (13) in the text) to render harmless any thing is exercised, an authorised person must, if it is practicable to do so, take a sample of it and give it to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it: Sch 6 Pt 2 para 6. As soon as may be after any thing has been seized and rendered harmless under Sch 6 Pt 2 para 1(m), the authorised person must prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by the authorised person, and must (1) give a signed copy of the report to a responsible person at the premises where the thing was found; and (2) unless that person is the owner of it, also serve a signed copy of the report on the owner, and if, where head (2) above applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on the owner by giving it to the person to whom a copy was given under Sch 6 Pt 2 para 4 (see note 9): Sch 6 Pt 2 para 7. As to service of documents see reg 22, Sch 9.

13 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 paras 1, 10(a). As to the meaning of 'enforcement duty' see PARA 574 note 7.

14 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 8(a).

15 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 9.

16 The reference to two working days has the meaning given in the Health and Safety at Work etc Act 1974 s 25A (power of customs officer to detain articles and substances: see PARA 381): REACH Enforcement Regulations 2008, SI 2008/2852, reg 9(4).

17 REACH Enforcement Regulations 2008, SI 2008/2852, reg 9(2).

18 REACH Enforcement Regulations 2008, SI 2008/2852, reg 9(3). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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**578. Enforcement: prohibition notices, improvement notices and enforcement notices.**

If an authorised person<sup>1</sup> is of the opinion that activities are being carried on or are likely to be carried on by or under the control of a person and that the activity involves or as the case may be, will involve a risk of serious personal injury, the authorised person may serve on that person a prohibition notice<sup>2</sup>. A prohibition notice must:

- 857 (1) state that the authorised person is of the opinion referred to above;
- 858 (2) specify the matters which in the authorised person's opinion give or, as the case may be, will give rise to the risk;
- 859 (3) where in the opinion of the authorised person any of those matters involves or, as the case may be, will involve a contravention of a listed REACH provision<sup>3</sup>, the authorised person must state that opinion, specify the provision or provisions which relate to that opinion and give particulars of the reasons supporting that opinion;
- 860 (4) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of head (2) above and any associated contraventions of provisions so specified in pursuance of head (3) above have been remedied<sup>4</sup>.

If an authorised person is of the opinion that a person is contravening one or more of the listed REACH provisions or has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, the authorised person may serve on that person an improvement notice<sup>5</sup>. An improvement notice must:

- 861 (a) state that the authorised person is of the opinion referred to above;
- 862 (b) specify the provision or provisions as to which the authorised person is of that opinion, giving particulars of the reasons supporting that opinion;
- 863 (c) require that the person to whom the improvement notice is addressed remedies the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought<sup>6</sup>) as may be specified in the notice<sup>7</sup>.

If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene a listed REACH provision, the authorised person may serve on that person an enforcement notice<sup>8</sup>. An enforcement notice must:

- 864 (i) state that the authorised person is of the opinion referred to above;
- 865 (ii) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- 866 (iii) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and

867 (iv) specify the period within which those steps must be taken<sup>9</sup>.

Where a prohibition notice, an improvement notice or an enforcement notice has been served but is not to take immediate effect, (A) the notice may be withdrawn by an authorised person at any time before the end of the period specified therein; (B) the period so specified may be extended or further extended by an authorised person at any time when an appeal against the notice is not pending<sup>10</sup>.

1 As to the meaning of 'authorised person' see PARA 577 note 3.

2 REACH Enforcement Regulations 2008, SI 2008/2852, reg 9(1), Sch 6 Pt 2 para 11. References in Sch 6 Pt 2 to a 'prohibition notice', an 'improvement notice' or an 'enforcement notice' have effect only for the purposes of Sch 6 Pt 2 and Sch 8 Pt 2 (appeals: see PARA 579): Sch 6 Pt 2 para 19. As to service of documents see reg 22, Sch 9.

3 As to the meaning of 'listed REACH provision' see PARA 574 note 5.

4 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 12. A direction contained in a prohibition notice in pursuance of head (4) in the text takes effect (1) at the end of the period specified in the notice; or (2) if the notice so declares, immediately: Sch 6 Pt 2 para 13.

5 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 14. See note 2.

6 As provided by the REACH Enforcement Regulations 2008, SI 2008/2852, reg 21 (see PARA 579).

7 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 15.

8 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 16. See note 2.

9 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 17.

10 REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 para 18.

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### **579. Appeals against notices.**

Where a person is served with a prohibition notice, improvement notice or enforcement notice<sup>1</sup> by the Health and Safety Executive<sup>2</sup> or a local (health and safety) authority<sup>3</sup>, that person may appeal that notice<sup>4</sup>. An appeal may be made to an employment tribunal<sup>5</sup>. The tribunal may cancel or affirm the notice and, if it affirms it, may do so in its original form or with such modifications as the tribunal may in the circumstances see fit<sup>6</sup>.

In the case of an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal<sup>7</sup>. In the case of a prohibition notice or an enforcement notice, the bringing of the appeal has the same effect as above if, on the application of the appellant, the tribunal so directs and only from the giving of that direction<sup>8</sup>.

One or more assessors<sup>9</sup> may be appointed in respect of proceedings brought before a tribunal under these provisions<sup>10</sup>.

<sup>1</sup> ie a notice served under the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6 Pt 2 section 2 (paras 11-19): see PARA 578. As to service of documents see reg 22, Sch 9.

<sup>2</sup> As to the Health and Safety Executive see PARA 361 et seq.

<sup>3</sup> As to the meaning of 'local (health and safety) authority' see PARA 574 note 4.

<sup>4</sup> REACH Enforcement Regulations 2008, SI 2008/2852, reg 21(1), (2)(b).

<sup>5</sup> REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 paras 1, 10(b). The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 4 (see PARA 379 note 2) applies to a notice served in Great Britain by the Health and Safety Executive or a local (health and safety) authority, and an enforcement notice is to be treated in the same way as an improvement notice for the purposes of Sch 4: REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 paras 2, 3.

<sup>6</sup> REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 para 6.

<sup>7</sup> REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 para 7.

<sup>8</sup> REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 para 8.

<sup>9</sup> For these purposes, 'assessor' has the same meaning as it has under the Health and Safety at Work etc Act 1974 s 24 (see PARA 379 note 3): REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 para 10(a).

<sup>10</sup> REACH Enforcement Regulations 2008, SI 2008/2852, Sch 8 Pt 2 para 9.

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## (9) GOOD LABORATORY PRACTICE

### 580. The United Kingdom good laboratory practice compliance programme.

A regulatory study<sup>1</sup> may not be conducted at any premises<sup>2</sup> of a test facility<sup>3</sup> unless:

- 868 (1) the operator<sup>4</sup> of the test facility is regarded<sup>5</sup> as a member<sup>6</sup> or a prospective member<sup>7</sup> of the United Kingdom good laboratory practice compliance programme (the 'UK GLP compliance programme'); and
- 869 (2) the operator's membership or prospective membership of that programme is or is partly in respect of those premises,

and if a regulatory study is conducted at any premises in contravention of this provision, the operator of that test facility is guilty of an offence<sup>8</sup>.

The body responsible for enforcing compliance with the relevant regulations<sup>9</sup> is the Good Laboratory Practice Monitoring Authority ('GLPMA'), a body consisting of the Secretary of State for Health, the Welsh Ministers, the Scottish Ministers and the Department of Health and Social Services for Northern Ireland<sup>10</sup>. The GLPMA may charge operators of test facilities and operators of test facilities must, if so charged, pay to the GLPMA such reasonable fees as the GLPMA may determine to cover the cost of providing inspections and services under those regulations<sup>11</sup>.

1 'Regulatory study' means a non-clinical experiment or set of experiments (1) in which an item is examined under laboratory conditions or in the environment in order to obtain data on its properties or its safety (or both) with respect to human health, animal health or the environment; (2) the results of which are, or are intended, for submission to the appropriate regulatory authorities; and (3) in respect of which compliance with the principles of good laboratory practice is required in respect of that experiment or set of experiments by the appropriate regulatory authorities (whether or not compliance with those principles in respect of that experiment or set of experiments is also a legislative requirement): see the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1) (definition amended by SI 2004/994). 'Regulatory authority' means any authority in any country or territory with legal responsibility for aspects of the control of chemicals or items of natural or biological origin: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1). As to the meaning of 'principles of good laboratory practice' see PARA 581. For an example of a legislative requirement that tests are to be carried out in accordance with the principles of good laboratory practice see the Cosmetic Products (Safety) Regulations 2008, SI 2008/1284, reg 16; and **SALE OF GOODS AND SUPPLY OF SERVICES**.

2 'Premises' in relation to a test facility, includes field sites at which phases of regulatory studies are conducted: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1).

3 'Test facility' means a facility which conducts or intends to conduct regulatory studies: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1).

4 'Operator', in relation to a test facility, means the person having control of the test facility: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1).

5 le by virtue of the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 5 or reg 6: see notes 6-7.

6 Subject to the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 6(2) and except where reg 6(5), (6) or (7) applies, the operator of a test facility is to be regarded as being a member of the UK GLP compliance programme in respect of particular test facility premises if (1) he was regarded as being a member of the programme in respect of those premises immediately before 14 December 1999 by virtue of the Good Laboratory Practice Regulations 1997, SI 1997/654, reg 6 (revoked); or (2) after having inspected those

premises, the GLPMA has informed the operator in writing that it is admitting the operator to membership of the programme in respect of those premises: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 6(1). The operator of a test facility ceases to be a member of the UK GLP compliance programme in respect of particular test facility premises if (a) he has informed the GLPMA in writing that regulatory studies are no longer conducted at those premises; or (b) membership of the programme in respect of those premises has been withdrawn by the GLPMA in accordance with reg 6(3): reg 6(2). Subject to reg 6(4), the GLPMA may by a notice in writing served on the operator of a test facility withdraw the operator's membership of the UK GLP compliance programme in respect of particular test facility premises if (i) the operator, in the opinion of the GLPMA, no longer intends to conduct regulatory studies at those premises; (ii) the operator is, in the opinion of the GLPMA, not capable of ensuring that the principles of good laboratory practice are adhered to at those premises; or (iii) at those premises there is a failure to adhere to the principles of good laboratory practice which, in the opinion of the GLPMA, may contribute towards precipitating a danger to animal or human health or to the environment: reg 6(3). Before serving a notice on an operator of a test facility under head (i) or head (ii) above, the GLPMA must (A) inform the operator in writing that it is considering serving such a notice and explain to him in writing the reasons why they are considering serving such a notice; (B) give the operator a specified period within which to make representations to him; and (C) consider any representations which are duly made and not withdrawn, unless, in order to ensure fulfilment of any Community obligation, it is necessary for the GLPMA to serve the notice immediately: reg 6(4). Where an operator of a test facility has ceased to be a member of the UK GLP compliance programme in respect of particular test facility premises on the grounds set out in reg 6(2)(a), or membership of the programme in respect of particular test facility premises has been withdrawn from him on the grounds set out in reg 6(3)(a), he is again to be regarded as being a member of the programme in respect of those premises if (aa) he has informed the GLPMA by notice in writing of the intention to conduct further regulatory studies at those premises; (bb) he has become a prospective member of the programme in respect of those premises in accordance with the procedure set out in reg 5 (see note 7); and (cc) after having inspected those premises, the GLPMA has informed the operator in writing of his readmission to membership of the programme in respect of those premises: reg 6(5). Where membership of the UK GLP compliance programme has been withdrawn from an operator of a test facility in respect of particular test facility premises on the grounds set out in reg 6(3)(b), he is again to be regarded as being a member of the programme in respect of those premises if he has informed the GLPMA by notice in writing of the intention to conduct further regulatory studies at those premises and the GLPMA is of the opinion that the operator is capable of ensuring that the principles of good laboratory practice are adhered to at those premises and has informed the operator in writing of his readmission to membership of the programme in respect of those premises: reg 6(6). Where membership of the UK GLP compliance programme has been withdrawn from an operator of a test facility in respect of particular test facility premises on the grounds set out in reg 6(3)(c), he is again to be regarded as being a member of the programme in respect of those premises if he has informed the GLPMA by notice in writing of the intention to conduct further regulatory studies at those premises and the GLPMA is of the opinion that the possible danger to animal or human health or to the environment which led to membership being withdrawn is no longer present and has informed the operator in writing of his readmission to membership of the programme in respect of those premises: reg 6(7). As to the GLPMA see the text and notes 9-10.

7 An operator of a test facility is, for these purposes, to be regarded as being a prospective member of the UK GLP compliance programme in respect of particular premises only if (1) he has informed the GLPMA by notice in writing of the intention to conduct regulatory studies at those premises; (2) the GLPMA has in writing acknowledged receipt of that notification and informed the operator that he is a prospective member of the programme in respect of those premises, and he has not ceased to be regarded as a prospective member of the programme in respect of those premises by virtue of reg 5(2): reg 5(1). An operator of a test facility ceases to be regarded as a prospective member of the UK GLP compliance programme in respect of particular test facility premises if (a) he is admitted to membership of the programme in respect of those premises by the GLPMA; (b) he informs the GLPMA in writing that he no longer conducts or intends to conduct regulatory studies at those premises; or (c) subject to reg 5(3), the GLPMA informs him in writing that it is not prepared to admit him to membership of the programme in respect of those premises: reg 5(2). The GLPMA must, before informing a prospective member of the UK GLP compliance programme that it is not prepared to admit him to membership of the programme in respect of particular test facility premises (i) inform the prospective member that it is considering taking such action and explain to him in writing the reasons why such action is being considered; (ii) give the operator a specified period within which to make representations to the GLPMA; and (iii) consider any representations which are duly made and not withdrawn, unless, for either of the reasons set out in reg 5(4), it is necessary for the GLPMA to inform the prospective member immediately that it is not prepared to admit him to membership of the programme in respect of those premises: reg 5(3). The reasons referred to in reg 5(3) are (A) there is a failure to adhere to the principles of good laboratory practice at those premises which, in the opinion of the GLPMA, may contribute towards precipitating a danger to animal or human health or to the environment; or (B) to ensure fulfilment of a Community obligation: reg 5(4) (amended by SI 2004/994).

8 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 4. As to offences see PARA 887.

9 The compliance with the Good Laboratory Practice Regulations 1999, SI 1999/3106: see the text and notes 1-8, 10-11; and PARA 581.



10 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 3(1); Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(d). The functions of the Good Laboratory Practice Monitoring Authority may be performed by any one of the Secretary of State for Health, the Welsh Ministers, the Scottish Ministers or the Department of Health and Social Services for Northern Ireland acting alone, or any two or more of them acting jointly: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 3(2); Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(d). In accordance with the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 3(1), (2), in the 1999 regulations, the 'Good Laboratory Practice Monitoring Authority' (the 'GLPMA') means any one or more of the Secretary of State for Health, the Welsh Ministers, the Scottish Ministers and the Department of Health and Social Services for Northern Ireland, and, in the case of anything falling to be done by the GLPMA, means any one or more of them acting as mentioned in reg 3(2): reg 3(3); Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(d). The GLPMA may appoint such persons as it thinks necessary for the proper discharge by it of its functions, and those persons are to be appointed upon such terms and conditions (including conditions as to remuneration, benefits, allowances and reimbursement for expenses) as the GLPMA thinks fit: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 3(4).

For the purposes of enforcing compliance with the 1999 regulations, a person appointed in accordance with reg 3(4) has a right (1) at any reasonable hour to enter any premises other than premises used only as a private dwelling house which he has reason to believe it is necessary for him to visit; (2) to carry out at those premises during that visit such inspections, examinations, tests and analyses as he considers necessary; (3) to require the production of and inspect any article or substances at the premises; (4) to require the production of, inspect and take copies of or extracts from any book, document, data or record (in whatever form it is held) at, or (in the case of computer data or records) accessible at, the premises; (5) subject to reg 9(5), to take possession of any article, substance, book, document, data, record (in whatever form they are held) at, or (in the case of computer data or records) accessible at, the premises; (6) to question any person whom he finds at the premises and whom he has reasonable cause to believe is able to give him relevant information; (7) to require any person to afford him such assistance as he considers necessary with respect to any matter within that person's control or in relation to which that person has responsibilities; (8) to require, as he considers necessary, any person to afford him such facilities as he may reasonably require that person to afford him, but nothing in this provision is to be taken to compel the production by any person of a document of which he would, on grounds of legal professional privilege, be entitled to withhold production on an order for disclosure in a claim in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session: reg 9(1) (which refers to an 'action' in the High Court; but see **CIVIL PROCEDURE** vol 11 (2009) PARA 18).

If a justice of the peace is satisfied by any written information on oath that there are reasonable grounds for entry into any premises other than premises used only as a private dwelling house for any purpose mentioned in reg 9(1), and (a) admission to the premises has been or is likely to be refused and notice of intention to apply for a warrant under this provision has been given to the occupier; or (b) an application for admission, or the giving of such notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return, the justice may by warrant signed by him, which is to continue in force for a period of one month, authorise any person appointed in accordance with reg 3(4) to enter the premises, if need be by force: reg 9(2). A person appointed in accordance with reg 3(4) entering any premises by virtue of reg 9(1) or of a warrant under reg 9(2) may take with him when he enters those premises such equipment as may appear to him necessary and any person who is authorised by the GLPMA to accompany him on that visit: reg 9(3). On leaving any premises which a person appointed in accordance with reg 3(4) is authorised to enter by a warrant under reg 9(2), that person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them: reg 9(4). Where, pursuant to reg 9(1)(e) (see head (5) above), a person appointed in accordance with reg 3(4) takes possession of any article, substance, book, document, data or record, he must leave at the premises with a responsible person a statement giving particulars of the article, substance, book, document, data or record sufficient to identify it and stating that he has taken possession of it: reg 9(5). Persons appointed in accordance with reg 3(4) must, when enforcing compliance with the 1999 regulations, have regard to any relevant provision of the Revised Guidance for the Conduct of Test Facility Inspections and Study Audits set out in European Parliament and EC Council Directive 2004/9 (OJ (OJ L50, 20.02.2004, p 28), Annex I: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 9(6) (amended by SI 2004/994).

11 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 16(1). The GLPMA may set those fees at levels such that they meet that part of the expenditure of the GLPMA which is reasonably attributable to the cost of inspecting and providing services under the 1999 regulations to or on behalf of the person or class of person charged but the fees must not include any element of profit: reg 16(2). Any such fee is to be payable within 14 days following written notice from the GLPMA requiring payment of the fee: reg 16(3). All unpaid sums due by way of, or on account of, any fees payable under reg 16 are to be recoverable as debts due to the Crown: reg 16(4). The GLPMA may in exceptional circumstances (1) waive payment of any fee or reduce any fee or part of a fee otherwise payable under reg 16; (2) refund the whole or part of any fee paid pursuant to reg 16: reg 16(5).

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# **581. Requirement to adhere to the principles of good laboratory practice.**

No person may conduct a regulatory study<sup>1</sup> at any premises<sup>2</sup> of a test facility<sup>3</sup> unless with regard to that study the principles of good laboratory practice<sup>4</sup> are adhered to:

- 870 (1) as respects the organisational structure surrounding the study; and
- 871 (2) as respects the conditions under which the study is planned, performed, monitored, recorded, archived and reported<sup>5</sup>.

If the Good Laboratory Practice Monitoring Authority ('GLPMA')<sup>6</sup> has reasonable grounds for believing that a person has contravened the above provision and is responsible for a serious deviation from the principles of good laboratory practice which may have affected the validity of a regulatory study, the GLPMA may by a notice served on the operator<sup>7</sup> of the test facility at whose premises the alleged contravention took place (a 'warning notice'):

- 872 (a) state the GLPMA's grounds for believing that the person has contravened that provision and is responsible for a serious deviation from the principles of good laboratory practice which may have affected the validity of a regulatory study;
- 873 (b) specify the measures which, in the opinion of the GLPMA, the operator of the test facility must take in order to ensure that the serious deviation from the principles of good laboratory practice which may have affected the validity of a regulatory study will not recur;
- 874 (c) require the operator of the test facility to take those measures, or measures which are at least equivalent to them, within such period as may be specified in the warning notice; and
- 875 (d) inform the operator of the test facility of:
  - 129 208. (i) his right of appeal against the warning notice<sup>8</sup>;
  - 209. (ii) the period within which such an appeal may be brought; and
  - 210. (iii) the effect that such an appeal will have on any criminal proceedings relating to the operator's alleged failure to comply with the warning notice<sup>9</sup>.
- 130

Any operator of a test facility who fails to comply with a warning notice is, unless that notice has been withdrawn by the GLPMA or cancelled by a court, guilty of an offence<sup>10</sup>.

1 As to the meaning of 'regulatory study' see PARA 580 note 1.

2 As to the meaning of 'premises' see PARA 580 note 2.

3 As to the meaning of 'test facility' see PARA 580 note 3.

4 'Principles of good laboratory practice' means (1) the principles of good laboratory practice set out in the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1), Sch 1, which are based on the Good Laboratory Practice Principles set out in European Parliament and EC Council Directive 2004/10 (OJ L50, 20.02.2004, p 44) on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances, Annex I s II; read with (2) the revised guidance for the conduct of test facility inspections

and study audits set out in the Good Laboratory Practice Regulations 1999, SI 1999/3106, Sch 2, which is based on part of the Revised Guidance for the Conduct of Test Facility Inspections and Study Audits in European Parliament and EC Council Directive 2004/9 (OJ L50, 20.02.2004, p 28) on the inspection and verification of good laboratory practice, Annex I: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1) (definition substituted, and the headings to Schs 1, 2 amended, by SI 2004/994).

The principles of good laboratory practice are set out in the Good Laboratory Practice Regulations 1999, SI 1999/3106, Sch 1 (as so amended) and divided into ten parts, the contents of which are indicated below: (1) test facility organisation and personnel: management's responsibilities, study director's responsibilities, principal investigator's responsibilities and study personnel responsibilities; (2) quality assurance programme: (a) general; (b) responsibilities of the quality assurance personnel; (3) facilities: (a) general; (b) test system facilities; (c) facilities for handling test and reference substances; (d) archive facilities; (e) waste disposal; (4) apparatus, materials and reagents; (5) test systems; physical/chemical and biological; (6) test and reference substances: receipt, handling, sampling and storage and characterisation; (7) standard operating procedures; (a) general; (b) application; (8) performance of the regulatory study: study plan, content of the study plan and conduct of the regulatory study; (9) reporting of regulatory study results: (a) general; (b) content of the final report; and (10) storage and retention of records and materials; (a) storage and retrieval; (b) retention.

The inspection procedures and study audits provisions are set out in Sch 2 Pt I (as so amended) (inspection procedures) and Pt II (study audits). Schedules 1, 2 are not set out in detail in this work.

5 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 7(1).

6 As to the GLPMA see PARA 580.

7 As to the meaning of 'operator' see PARA 580 note 4.

8 As to his right of appeal under the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 8. An operator of a test facility who is aggrieved by a decision to serve a warning notice on him may appeal in England, Wales or Northern Ireland, to a magistrates' court, and such an appeal is to be by way of complaint for an order: reg 8(1)(a). The period during which such an appeal may be brought is (1) one month from the date on which the warning notice was served on the operator desiring to appeal; or (2) the period specified in the warning notice, whichever ends the earlier: reg 8(2). On an appeal against a warning notice, a magistrates' court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may, in the circumstances, think fit: reg 8(3). Pending the final disposal of an appeal, unless or until the appeal is withdrawn, any criminal proceedings relating to the operator's alleged failure to comply with the warning notice are to be stayed or suspended: reg 8(4).

9 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 7(2).

10 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 7(3). As to offences and penalties see PARA 887.

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## **(10) MISCELLANEOUS REQUIREMENTS**

### **582. Safety and other requirements relating to miscellaneous products etc.**

In addition to the statutory requirements set out in the preceding paragraphs<sup>1</sup>, there are a number of safety and other technical requirements relating to the supply of equipment, products and services which are discussed elsewhere in this work. For example, products which are produced for incorporation in buildings or in civil engineering works must satisfy the requirements of the Construction Products Regulations 1991<sup>2</sup>; certain electrical equipment must satisfy the requirements of the Electrical Equipment (Safety) Regulations 1994 and the Plugs and Sockets etc (Safety) Regulations 1994<sup>3</sup>; gas appliances must satisfy the requirements of the Gas Appliances (Safety) Regulations 1995<sup>4</sup>; most types of electrical and electronic apparatus must satisfy the requirements of the Electromagnetic Compatibility Regulations 2006<sup>5</sup>; equipment for use outdoors must satisfy the requirements of the Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001<sup>6</sup>; motor vehicles must satisfy the requirements of the Road Vehicles (Construction and Use) Regulations 1986<sup>7</sup>; and cableway installations designed to carry persons must satisfy the requirements of the Cableway Installations Regulations 2004<sup>8</sup>.

Gas transporters and suppliers, electricity distributors and suppliers and water and sewerage undertakers are subject to statutory regulation as discussed elsewhere in this work<sup>9</sup>. No person may convey gas<sup>10</sup> in a network<sup>11</sup> unless:

- 876 (1) he has prepared a safety case<sup>12</sup> containing the specified particulars<sup>13</sup> and that safety case has been accepted by the Health and Safety Executive<sup>14</sup>; and
- 877 (2) where any other person is conveying gas in that network, there is a sole network emergency co-ordinator<sup>15</sup> for the network<sup>16</sup>.

The Executive may, by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by the relevant regulations concerned with conveying gas in a network<sup>17</sup>, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing<sup>18</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons likely to be affected by the exemption will not be prejudiced in consequence of it<sup>19</sup>.

<sup>1</sup> See PARA 531 et seq.

<sup>2</sup> See the Construction Products Regulations 1991, SI 1991/1620; and **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 99; **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 754-755.

<sup>3</sup> See the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260; the Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 1148-1151.

4 See the Gas Appliances (Safety) Regulations 1995, SI 1995/1629; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 781 et seq; **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 612.

5 See the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; and **TELECOMMUNICATIONS AND BROADCASTING**.

6 See the Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001, SI 2001/1701; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 53.

7 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 267 et seq.

8 See the Cableway Installations Regulations 2004, SI 2004/129.

9 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; FUEL AND ENERGY; WATER AND WATERWAYS**.

10 For these purposes, any reference to the conveyance of gas is a reference to the conveyance of gas through pipes; and 'gas' means any substance in a gaseous state which consists wholly or mainly of methane: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1), (7). As to the content and other characteristics of gas see reg 8, Sch 3.

11 For these purposes, any reference to a network is, subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(3), (4), a reference to a connected network of pipes used for the conveyance of gas from a gas processing facility, a storage facility or an interconnector, except a connected network of pipes used exclusively for conveying gas to non-domestic premises: reg 2(2). A network does not include pipes upstream from a junction on a pipe used exclusively for conveying gas to an electricity generating station; and this reference to a junction on a pipe used exclusively for conveying gas to an electricity generating station is a reference to the point where the upstream end of the pipe joins a pipe used for another purpose: reg 2(3). Where gas which does not conform with the requirements referred to in reg 8(1) (content and other characteristics of gas) is conveyed from a gas processing facility for treatment or blending so as to bring it into conformity with those requirements, any pipes used exclusively for conveying gas from that facility to the point where the gas is treated or blended or to non-domestic premises or to both, are not be treated as part of a network for these purposes: reg 2(4). Any reference to conveying gas in a network includes a reference to conveying gas in any part of the network: reg 2(8).

12 For these purposes, any reference to a safety case is a reference to a document containing the particulars required by the provision of the Gas Safety (Management) Regulations 1996, SI 1996/551, pursuant to which the safety case is prepared, and (1) in so far as the document contains other particulars it is not to be treated as part of the safety case for these purposes; (2) nothing in the 1996 regulations requires the particulars to relate to a source of risk other than the gas itself: reg 2(5).

13 Ie the particulars specified in the Gas Safety (Management) Regulations 1996, SI 1996/551, Sch 1.

14 For these purposes, any reference to the Executive accepting a safety case or revision thereof is a reference to the Executive notifying in writing the person who prepared it that it is satisfied with the case for health and safety made out in it: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(6). As to the Health and Safety Executive see PARA 361 et seq.

15 For these purposes, a network emergency co-ordinator is, subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 3(3), a person who has prepared a safety case containing the particulars specified in Sch 2 and has had that safety case accepted by the Executive: reg 3(2). Where a network emergency co-ordinator has given written notice to the Executive and to all persons conveying gas in the network that he no longer intends to act in that capacity, he is not to be the network emergency co-ordinator for these purposes from the time such notice takes effect (which must not be less than six months after it was given): reg 3(3). Nothing in the 1996 regulations prevents a person who conveys gas in a network from also being the network emergency co-ordinator: reg 3(4).

16 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 3(1). As to revision of safety cases see reg 4; as to the duty to conform with the safety case see reg 5; as to the duties imposed on certain other persons to co-operate with a person conveying gas in a network see reg 6; as to gas escapes and investigations see reg 7; and as to the keeping of documents see reg 9. See further **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 903 et seq.

17 Ie any requirement or prohibition imposed by the Gas Safety (Management) Regulations 1996, SI 1996/551.

18 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 11(1).

19 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 11(2).

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## 6. PROVISIONS RELATING TO GENERAL RISKS

### (1) GENERAL PROCESSES AND ACTIVITIES

#### (i) Manual Handling

##### 583. Manual handling operations.

Every employer<sup>1</sup>, so far as is reasonably practicable<sup>2</sup>, must avoid the need for his employees<sup>3</sup> to undertake any manual handling operations (that is, any transporting or supporting of a load<sup>4</sup> by hand or by bodily force<sup>5</sup>) at work, which involves a risk of the employees' being injured<sup>6</sup>. In determining for these purposes whether manual handling operations at work involve a risk of injury and in determining the appropriate steps to reduce that risk, regard must be had in particular to:

- 878 (1) the physical suitability of the employee to carry out the operations;
- 879 (2) the clothing, footwear or other personal effects he is wearing;
- 880 (3) his knowledge and training;
- 881 (4) the results of any relevant risk assessment carried out<sup>7</sup>;
- 882 (5) whether the employee is within a group of employees identified by that assessment as being especially at risk; and
- 883 (6) the results of any health surveillance<sup>8</sup> provided<sup>9</sup>.

Where it is not reasonably practicable to avoid such a need, every employer must:

- 884 (a) make a suitable and sufficient assessment of all such manual handling operations to be undertaken by his employees having regard to specified factors and considering specified questions<sup>10</sup>;
- 885 (b) take appropriate steps to reduce the risk of injury to those employees as a result of their undertaking such operations to the lowest level of risk reasonably practicable<sup>11</sup>;
- 886 (c) take appropriate steps to provide any of those employees who are undertaking any such manual handling operations with general indications and (where it is reasonably practicable to do so) precise information on the weight of each load<sup>12</sup> and the heaviest side of any load whose centre of gravity is not positioned centrally<sup>13</sup>.

The assessment referred to above must be reviewed if there is reason to suspect that it is no longer valid or if there has been a significant change in the handling operations to which it relates<sup>14</sup> and, if required, the assessment must be changed<sup>15</sup>. If an employer, in pursuance of his duty to take appropriate steps to reduce a risk of injury to an employee, provides a system of work for his use, then the employee must make full and proper use of it<sup>16</sup>.

The duties imposed on an employer in respect of his employees are also imposed on a self-employed person in respect of himself<sup>17</sup>.

No specified person<sup>18</sup> must, in the course of his work in premises to which the Offices, Shops and Railway Premises Act 1963 applies<sup>19</sup>, be required to lift, carry or move a load so heavy as to be likely to cause injury to him<sup>20</sup>.

Issues of foreseeability of harm and the extent of the duty to avoid lifting tasks frequently arise in the context of ambulance and other health care workers. Unlike a commercial operation such as a removals firm, an ambulance service does not have the option of refusing to undertake a task such as removing a patient from his home and may, indeed, be liable in negligence to members of the public for failing to attend to a patient within a reasonable time<sup>21</sup>. That does not, however, mean that the service can expose its employees to unacceptable risk; the employers have the same duty to be efficient and up-to-date and careful of their employees' safety as anyone else; but it does mean that what is reasonable may have to be judged in the light of the service's duties to the public and the resources available to it to perform those duties<sup>22</sup>. In a hospital ward where staff undertake regular lifting of patients, a shortage of resources does not exonerate the management from the duty to undertake an assessment of risk and to take appropriate steps to reduce the risk of injury caused by the manual handling of patients to the lowest level reasonably practicable<sup>23</sup>.

1     le except the employer of the master or crew of a sea-going ship, in respect of the normal ship-board activities of the crew under the direction of the master: Manual Handling Operations Regulations 1992, SI 1992/2793, reg 3. The regulations do not apply to such an employer, master or crew in respect of such activities, and are ambiguous as to whether they apply at all to master and crew: see reg 3. Subject to this, the regulations apply to premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see **PARA 305**), as they apply within Great Britain: Manual Handling Operations Regulations 1992, SI 1992/2793, reg 7; Interpretation Act 1978 s 17(2). See also the Merchant Shipping and Fishing Vessels (Manual Handling Operations) 1998, SI 1998/2857; and **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 623** et seq.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt (1) any of the home forces, any visiting force or any headquarters from any requirement imposed by the Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4; or (2) any member of the home forces, any member of a visiting force or any member of a headquarters from the requirement imposed by reg 5; and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by that Secretary of State by a further certificate in writing at any time: reg 6(1). 'Home forces' has the same meaning as in the Visiting Forces Act 1952 s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) **PARA 142**); 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) **PARA 140**); 'headquarters' has the same meaning as in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) **PARA 150**); and 'member of a headquarters' has the same meaning as in the International Headquarters and Defence Organisations Act 1964 Schedule para 1(1) (see **ARMED FORCES** vol 2(2) (Reissue) **PARA 150**): Manual Handling Operations Regulations 1992, SI 1992/2793, reg 6(2); Interpretation Act 1978 s 17(2).

The Manual Handling Operations Regulations 1992, SI 1992/2793, came into force on 1 January 1993 (reg 1), and implemented EC Council Directive 90/269 (OJ L156, 21.06.1990, p 9) on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury.

2     As to the meaning of 'reasonably practicable' see **PARA 417**.

3     As to the meaning of 'employee' see **PARA 302** note 4.

4     'Supporting of a load' includes the lifting, putting down, pushing, pulling, carrying or moving thereof; and 'load' includes any person and any animal: Manual Handling Operations Regulations 1992, SI 1992/2793, reg 2(1). See *Hughes v Grampian Country Foods Group* (2008) SCLR 157, (2007) Times, 4 June, Ct of Sess (IH) (trussing chickens not a manual handling operation: no transporting or supporting of a load).

5     Manual Handling Operations Regulations 1992, SI 1992/2793, reg 2(1).

6     Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(a). 'Injury' in this context does not include injury caused by any toxic or corrosive substance which has leaked or spilled from a load, is present on the surface of a load but has not leaked or spilled from it, or is a constituent part of a load; and 'injured' is to be construed accordingly: reg 2(1).



As what amounts to risk, and the elements of foreseeability, see *Koonjul v Thameslink Healthcare Services* [2000] PIQR P123, CA (a precise evaluation of the level of risk involved in carrying out a number of everyday manual handling operations (eg pulling out and making a bed) with precise warnings to each employee as to how each was to be carried out is impracticable); *Alsop v Sheffield City Council* [2002] EWCA Civ 429, [2002] All ER (D) 45 (Mar) (risk of injury to an experienced refuse collector in pulling a wheelie bin up a ramp held not foreseeable); *O'Neill v DSG Retail Ltd* [2002] EWCA Civ 1139, [2003] ICR 222, [2002] All ER (D) 500 (Jul) (risk of injury through excessive twisting whilst carrying out manual handling operations held reasonably foreseeable). As to liability under the 1992 regulations see further *King v Sussex Ambulance NHS Trust* [2002] EWCA Civ 953, [2002] ICR 1413, 68 BMLR 177, [2002] All ER (D) 95 (Jul) (in light of ambulance service's duties and resources, no liability arose where ambulance technician injured lifting patient); *Bennetts v Ministry of Defence* [2004] All ER (D) 310 (Mar), CA (claimant acted outside the normal procedures which reflected what the defendant employer would have reasonably foreseen as a risk; defendant not liable for her injury). See also the text and notes 21-23.

7 le pursuant to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.

8 le pursuant to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 6: see PARA 435.

9 Manual Handling Operations Regulations 1992, SI 1992/2793 reg 4(3) (added by SI 2002/2174).

10 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(b)(i). The factors and questions to which regard must be paid are:

- 207 (1) the tasks: asking whether they involve: holding or manipulating loads at a distance from the trunk; unsatisfactory bodily movement or posture (especially twisting the trunk, stooping or reaching upwards); excessive movement of loads (especially excessive lifting or lowering distances, or carrying distances); excessive pushing or pulling of loads; the risk of sudden movement of loads; frequent or prolonged physical effort; insufficient rest or recovery periods; and whether they involve a rate of work imposed by a process (Sch 1 para 1);
- 208 (2) the loads: asking whether they are: heavy; bulky or unwieldy; difficult to grasp; unstable, or with contents likely to shift; sharp, hot, or otherwise potentially damaging (Sch 1 para 2);
- 209 (3) the working environment: asking whether there are: space constraints, preventing good posture; uneven, slippery or unstable floors; variations in levels of floors or work surfaces; extremes of temperature or humidity; conditions causing ventilation problems or gusts of wind; or poor lighting conditions (Sch 1 para 3);
- 210 (4) individual capacity: asking whether the job: requires unusual strength, height, etc; creates a hazard to those who might be pregnant or considered to have a health problem; or requires special information or training for its safe performance (Sch 1 para 4);
- 211 (5) other factors: asking whether movement or posture is hindered by personal protective equipment or by clothing (Sch 1 para 5).

An employer who does not comply with the obligation imposed by reg 4(1)(b)(i) is not exonerated from complying with the obligations imposed by reg 4(1)(b)(ii), (iii): *Swain v Denso Marston Ltd* [2000] ICR 1079, [2000] PIQR P129, CA; and see *Parr v Gravatam Engineering Systems Ltd* [2007] EWCA Civ 967, [2007] All ER (D) 212 (Oct).

The Health and Safety Executive has issued guidance on risk assessment for these purposes: see *A Guide to Risk Assessment Requirements* (HSE, INDG218, 1996; reprinted in January 2004). As to risk assessment see also *Spencer v Boots The Chemist Ltd* [2002] EWCA Civ 1691, [2002] All ER (D) 465 (Oct).

11 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(b)(ii). See *Cullen v North Lanarkshire Council* 1998 SLT 847, Ct of Sess (IH); *Hall v City of Edinburgh Council* 1999 SLT 744, Ct of Sess (OH); *King v RCO Support Services Ltd* [2001] ICR 608, [2000] All ER (D) 2200, CA; *Parr v Gravatam Engineering Systems Ltd* [2007] EWCA Civ 967, [2007] All ER (D) 212 (Oct) (employer failed to take appropriate steps to reduce risk of injury to lowest level reasonably practicable by failing to carry out sufficient risk assessment). The requirements of the Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(b)(ii) are separate from, and additional to, the requirement to carry out a risk assessment. Where no risk assessment has been carried out, the judge should focus on the regulation which imposes the duty to take positive action to reduce risk, ie reg 4(1)(b)(ii); once it has been shown that the manual handling operation carried some risk of injury, the burden of proof is on the employer to plead and prove that it had taken appropriate steps to reduce that risk to the lowest level reasonably practicable: *Egan v Central Manchester and Manchester Children's University Hospitals NHS Trust* [2008] EWCA Civ 1424, [2009] ICR 585, [2008] All ER (D) 153 (Dec).

- 12 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(b)(iii)(aa).
- 13 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(1)(b)(iii)(bb).
- 14 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(2)(a), (b).
- 15 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 4(2).
- 16 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 5.
- 17 Manual Handling Operations Regulations 1992, SI 1992/2793, reg 2(2). As to the meaning of 'self-employed person' see PARA 302 note 5.
- 18 If no person specified in the Offices, Shops and Railway Premises Act 1963 s 90(4): see PARA 327 note 6.
- 19 As to the application of the Offices, Shops and Railway Premises Act 1963 see PARA 327 et seq.
- 20 Offices, Shops and Railway Premises Act 1963 s 23(1) (repealed, except in so far as it applies to any person specified in s 90(4), by SI 1992/2793).
- 21 See *King v Sussex Ambulance NHS Trust* [2002] EWCA Civ 953 at [23], [2002] ICR 1413, 68 BMLR 177, [2002] All ER (D) 95 (Jul) per Hale LJ, citing *Kent v Griffiths* [2001] QB 36, [2000] 2 All ER 474.
- 22 *King v Sussex Ambulance NHS Trust* [2002] EWCA Civ 953, [2002] ICR 1413, 68 BMLR 177, [2002] All ER (D) 95 (Jul) per Hale LJ.
- 23 See *Knott v Newham Healthcare NHS Trust* [2002] EWHC 2091 (QB) at [27]-[35], [2002] All ER (D) 216 (Oct) per Simon J, where particular criticism is made of the fact that the method of lifting patients known as the 'drag lift' was employed, although that method has been criticised as a method of lifting since 1981 as dangerous both to patients and staff; affd [2003] EWCA Civ 771, [2003] All ER (D) 164 (May). See also *Purvis v Buckinghamshire County Council* [1999] ELR 231 QBD (the regulations can apply when a person is acting in an emergency; although the defendant was not liable on the facts in this case).

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## **(ii) Work at Height**

### **584. Avoidance of risks.**

Every employer must ensure that work at height<sup>1</sup> is (1) properly planned<sup>2</sup>; (2) appropriately supervised; and (3) carried out in a manner which is so far as is reasonably practicable<sup>3</sup> safe, and that its planning includes the required selection of work equipment<sup>4</sup>. Subject to certain exceptions<sup>5</sup> every employer must ensure that work at height is carried out only when the weather conditions do not jeopardise the health or safety of persons involved in the work<sup>6</sup>.

Every employer must ensure that no person engages in any activity, including organisation, planning and supervision, in relation to work at height or work equipment for use in such work unless he is competent to do so or, if being trained, is being supervised by a competent person<sup>7</sup>.

In identifying the measures required<sup>8</sup> for the avoidance of risks from work at height, every employer must take account of a risk assessment<sup>9</sup>. Every employer must ensure that work is not carried out at height where it is reasonably practicable to carry out the work safely otherwise than at height<sup>10</sup>. Where work is carried out at height, every employer must take suitable<sup>11</sup> and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury<sup>12</sup>. Such measures must include (a) his ensuring that the work is carried out (i) from an existing place of work; or (ii) in the case of obtaining access or egress<sup>13</sup>, using an existing means, which complies with the prescribed requirements<sup>14</sup>, where it is reasonably practicable to carry it out safely and under appropriate ergonomic conditions; and (b) where it is not reasonably practicable for the work to be carried out in accordance with head (a) above, his providing sufficient work equipment for preventing, so far as is reasonably practicable, a fall occurring<sup>15</sup>. Where such measures do not eliminate the risk of a fall occurring, every employer must, so far as is reasonably practicable, provide sufficient work equipment to minimise the distance and consequences, or where it is not reasonably practicable to minimise the distance, the consequences, of a fall; and must<sup>16</sup> provide such additional training and instruction or take other additional suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury<sup>17</sup>.

1 'Work at height' means (1) work in any place, including a place at or below ground level; (2) obtaining access to or egress from such place while at work, except by a staircase in a permanent workplace, where, if measures required by the Work at Height Regulations 2005, SI 2005/735, were not taken, a person could fall a distance liable to cause personal injury: reg 2(1).

2 For these purposes, reference to planning of work includes planning for emergencies and rescue: Work at Height Regulations 2005, SI 2005/735, reg 4(2).

3 As to what is reasonably practicable see PARA 417.

4 Work at Height Regulations 2005, SI 2005/735, reg 4(1). It has been suggested that it must be foreseeable that a person is going to work at height for the duty to arise: see *Duncan v Acrabuild Ltd* [2008] All ER (D) 384 (Jul).

The reference in the Work at Height Regulations 2005, SI 2005/735, reg 4(1) to the selection of work equipment is to the selection of such equipment under reg 7 (see PARA 585). 'Work equipment' means any machinery,

appliance, apparatus, tool or installation for use at work (whether exclusively or not) and includes anything to which reg 8, Schs 2-6 apply (see PARA 585): reg 2(1).

The Work at Height Regulations 2005, SI 2005/735, came into force on 6 April 2005: reg 1. They apply in Great Britain, and outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Work at Height Regulations 2005, SI 2005/735, reg 3(1). The requirements imposed by the regulations on an employer apply in relation to work (1) by an employee of his; or (2) by any other person under his control, to the extent of his control: reg 3(2). The requirements imposed by the regulations on an employer also apply to (a) a self-employed person, in relation to work by him or by a person under his control, to the extent of his control; and (b) to any person other than a self-employed person, in relation to work by a person under his control, to the extent of his control: reg 3(3).

The provisions of regs 4-16 do not apply to (i) the master and crew of a ship ('ship' includes every description of vessel used in navigation, other than a ship which forms part of her Majesty's Navy: reg 3(6)(c)), or to the employer of such persons, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master and are not liable to expose persons at work other than the master and crew to a risk to their safety (see reg 3(4)(a)); (ii) a specified (ie by the Docks Regulations 1988, SI 1988/1655, reg 7(6), see PARA 707) place where persons are engaged in dock operations (see the Work at Height Regulations 2005, SI 2005/735, reg 3(4)(b) (amended by SI 2007/114)); or (iii) a specified (ie by the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(3), see PARA 715) place where persons are engaged in fish loading processes (see the Work at Height Regulations 2005, SI 2005/735, reg 3(4)(c)). As to special provision in relation to caving and climbing see reg 14A; and PARA 589.

5    le where members of the police, fire, ambulance or other emergency services are acting in an emergency: Work at Height Regulations 2005, SI 2005/735, reg 4(4).

6    Work at Height Regulations 2005, SI 2005/735, reg 4(3).

7    Work at Height Regulations 2005, SI 2005/735, reg 5.

8    le by the Work at Height Regulations 2005, SI 2005/735, reg 6.

9    Work at Height Regulations 2005, SI 2005/735, reg 6(1). The reference to a risk assessment is to such an assessment under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (see PARA 429).

10   Work at Height Regulations 2005, SI 2005/735, reg 6(2).

11   'Suitable' means suitable in any respect which it is reasonably foreseeable will affect the safety of any person: Work at Height Regulations 2005, SI 2005/735, reg 2(1).

12   Work at Height Regulations 2005, SI 2005/735, reg 6(3).

13   'Access' and 'egress' include ascent and descent: Work at Height Regulations 2005, SI 2005/735, reg 2(1).

14   le prescribed by the Work at Height Regulations 2005, SI 2005/735, reg 6(4), Sch 1. Every existing place of work or means of access or egress at height must (1) be stable and of sufficient strength and rigidity for the purpose for which it is intended to be or is being used; (2) where applicable, rest on a stable, sufficiently strong surface; (3) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work to be carried out there; (4) possess suitable and sufficient means for preventing a fall; (5) possess a surface which has no gap (a) through which a person could fall; (b) through which any material or object could fall and injure a person; or (c) giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk; (6) be so constructed and used, and maintained in such condition, as to prevent, so far as is reasonably practicable the risk of slipping or tripping, or any person being caught between it and any adjacent structure; (7) where it has moving parts, be prevented by appropriate devices from moving inadvertently during work at height: Sch 1.

15   Work at Height Regulations 2005, SI 2005/735, reg 6(4).

16   le without prejudice to the generality of Work at Height Regulations 2005, SI 2005/735, reg 6(3).

17   Work at Height Regulations 2005, SI 2005/735, reg 6(5).

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### 585. Selection of work equipment.

Every employer, in selecting work equipment<sup>1</sup> for use in work at height<sup>2</sup> must (1) give collective protection measures priority over personal protection measures; and (2) take account of (a) the working conditions and the risks to the safety of persons at the place where the work equipment is to be used; (b) in the case of work equipment for access and egress<sup>3</sup>, the distance to be negotiated; (c) the distance and consequences of a potential fall; (d) the duration and frequency of use; (e) the need for easy and timely evacuation and rescue in an emergency; (f) any additional risk posed by the use, installation or removal of that work equipment or by evacuation and rescue from it; and (g) other provisions<sup>4</sup> relating to work at height<sup>5</sup>. An employer must select work equipment for work at height which is appropriate to the nature of the work to be performed and the foreseeable loadings, allows passage without risk, and is in other respects the most suitable<sup>6</sup> work equipment, having regard to the avoidance of risks from work at height<sup>7</sup>.

Every employer must ensure that the prescribed requirements are complied with in relation to the following equipment: (i) a guard-rail, toe-board, barrier or similar collective means of protection<sup>8</sup>; (ii) a working platform<sup>9</sup>; (iii) a net, airbag or other collective safeguard for arresting falls which is not part of a personal fall protection system<sup>10</sup>; (iv) a personal fall protection system<sup>11</sup>; and (v) a ladder<sup>12</sup>.

1 As to the meaning of 'work equipment' see PARA 584 note 4.

2 As to the meaning of 'work at height' see PARA 584 note 1.

3 As to the meanings of 'access' and 'egress' see PARA 584 note 13.

4 Ie the other provisions of the Work at Height Regulations 2005, SI 2005/735.

5 Work at Height Regulations 2005, SI 2005/735, reg 7(1). As to the activities to which these provisions do not apply, see PARA 584.

6 As to the meaning of 'suitable' see PARA 584 note 11.

7 Work at Height Regulations 2005, SI 2005/735, reg 7(2). As to avoidance of risks from work at height see PARA 584.

8 The requirements referred to are the provisions of Work at Height Regulations 2005, SI 2005/735, Sch 2: reg 8(a). A guard-rail, toe-board, barrier or similar collective means of protection must (1) be of sufficient dimensions, of sufficient strength and rigidity for the purposes for which it is being used, and otherwise suitable; (2) be so placed, secured and used as to ensure, so far as is reasonably practicable, that it does not become accidentally displaced; and (3) be so placed as to prevent, so far as is practicable, the fall of any person, or of any material or object, from any place of work: Sch 2 paras 1, 2. In relation to work at height involved in construction work (a) the top guard-rail or other similar means of protection must be at least 950 millimetres or, in the case of such means of protection already fixed at the coming into force of the Work at Height Regulations 2005, SI 2005/735, at least 910 millimetres above the edge from which any person is liable to fall; (b) toe-boards must be suitable and sufficient to prevent the fall of any person, or any material or object, from any place of work; and (c) any intermediate guard-rail or similar means of protection must be positioned so that any gap between it and other means of protection does not exceed 470 millimetres: Sch 2 para 3. 'Construction work' has the meaning assigned to it by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674): Work at Height Regulations 2005, SI 2005/735, reg 2(1) (definition amended by SI 2007/320). The Health and Safety Executive may, by a certificate in writing, make exemptions in relation to heads (a), (c) above: Work at Height Regulations 2005, SI 2005/735, reg 15(1). However, the Executive will

not grant any such exemption unless, having regard to the conditions, if any, which it proposes to attach to the exemption, and any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 15(2). Any structure or part of a structure which supports means of protection or to which means of protection are attached must be of sufficient strength and suitable for the purpose of such support or attachment: Sch 2 para 4. As to the meaning of 'structure' see PARA 674 note 4. Subject to Sch 2 para 2, there must not be a lateral opening in means of protection save at a point of access to a ladder or stairway where an opening is necessary; means of protection must be removed only for the time and to the extent necessary to gain access or egress or for the performance of a particular task and must be replaced as soon as practicable; and the task must not be performed while means of protection are removed unless effective compensatory safety measures are in place: Sch 2 para 5.

9 'Working platform' means any platform used as a place of work or as a means of access to or egress from a place of work, and includes any scaffold, suspended scaffold, cradle, mobile platform, trestle, gangway, gantry and stairway: Work at Height Regulations 2005, SI 2005/735, reg 2(1). In relation to working platforms, the requirements of Sch 3 Pt 1 (paras 1-6) must be complied with: reg 8(b)(i). Any surface on which any supporting structure rests must be stable, of sufficient strength and of suitable composition safely to support the supporting structure, the working platform and any loading intended to be placed on the working platform: Sch 3 Pt 1 para 2. 'Supporting structure' means any structure used for the purpose of supporting a working platform and includes any plant used for that purpose: Sch 3 Pt 1 para 1. Any supporting structure must (1) be suitable and of sufficient strength and rigidity for the purpose for which it is being used; (2) in the case of a wheeled structure, be prevented by appropriate devices from moving inadvertently during work at height; (3) in other cases, be prevented from slipping by secure attachment to the bearing surface or to another structure, provision of an effective anti-slip device or by other means of equivalent effectiveness; (4) be stable while being erected, used and dismantled; and (5) when altered or modified, be so altered or modified as to ensure that it remains stable: Sch 3 Pt 1 para 3. A working platform must (a) be suitable and of sufficient strength and rigidity for the purpose or purposes for which it is intended to be used or is being used; (b) be so erected and used as to ensure that its components do not become accidentally displaced so as to endanger any person; (c) when altered or modified, be so altered or modified as to ensure that it remains stable; and (d) be dismantled in such a way as to prevent accidental displacement: Sch 3 Pt 1 para 4. A working platform must (i) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work being carried out there; (ii) possess a suitable surface and, in particular, be so constructed that the surface of the working platform has no gap through which a person could fall, through which any material or object could fall and injure a person, or giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk; and (iii) be so erected and used, and maintained in such condition, as to prevent, so far as is reasonably practicable the risk of slipping or tripping or any person being caught between the working platform and any adjacent structure: Sch 3 Pt 1 para 5. A working platform and any supporting structure must not be loaded so as to give rise to a risk of collapse or to any deformation which could affect its safe use: Sch 3 Pt 1 para 6.

Additional requirements in relation to scaffolding are made by Sch 3 Pt 2 (paras 7-12): reg 8(b)(ii). Strength and stability calculations for scaffolding must be carried out unless a note of the calculations, covering the structural arrangements contemplated, is available, or, it is assembled in conformity with a generally recognised standard configuration: Sch 3 Pt 2 para 7. Depending on the complexity of the scaffolding selected, an assembly, use and dismantling plan must be drawn up by a competent person, which may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question: Sch 3 Pt 2 para 8. A copy of the plan, including any instructions it may contain, must be kept available for the use of persons concerned in the assembly, use, dismantling or alteration of scaffolding until it has been dismantled: Sch 3 Pt 2 para 9. The dimensions, form and layout of scaffolding decks must be appropriate to the nature of the work to be performed and suitable for the loads to be carried and permit work and passage in safety: Sch 3 Pt 2 para 10. While a scaffold is not available for use, including during its assembly, dismantling or alteration, it must be marked with general warning signs in accordance with the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341 (see PARA 445) and be suitably delineated by physical means preventing access to the danger zone: Work at Height Regulations 2005, Sch 3 Pt 2 para 11. Scaffolding may be assembled, dismantled or significantly altered only under the supervision of a competent person and by persons who have received appropriate and specific training in the operations envisaged which addresses specific risks which the operations may entail and precautions to be taken, and more particularly in (A) understanding of the plan for the assembly, dismantling or alteration of the scaffolding concerned; (B) safety during the assembly, dismantling or alteration of the scaffolding concerned; (C) measures to prevent the risk of persons, materials or objects falling; (D) safety measures in the event of changing weather conditions which could adversely affect the safety of the scaffolding concerned; (E) permissible loadings; (F) any other risks which the assembly, dismantling or alteration of the scaffolding may entail: Sch 3 Pt 2 para 12.

10 The requirements that must be complied with are those set out in the Work at Height Regulations 2005, SI 2005/735, Sch 4: reg 8(c). A collective safeguard for arresting falls is required to be used only if (1) a risk assessment has demonstrated that the work activity can so far as is reasonably practicable be performed safely while using it and without affecting its effectiveness; (2) the use of other, safer work equipment is not reasonably practicable; and (3) a sufficient number of available persons have received adequate training specific to the safeguard, including rescue procedures: Sch 4 paras 1, 2. Such a safeguard must be suitable and

of sufficient strength to arrest safely the fall of any person who is liable to fall: Sch 4 para 3. Such a safeguard must (a) in the case of a safeguard which is designed to be attached, be securely attached to all the required anchors, and the anchors and the means of attachment to them must be suitable and of sufficient strength and stability for the purpose of safely supporting the foreseeable loading in arresting any fall and during any subsequent rescue; (b) in the case of an airbag, landing mat or similar safeguard, be stable; and (c) in the case of a safeguard which distorts in arresting a fall, afford sufficient clearance: Sch 4 para 4. Suitable and sufficient steps must be taken to ensure, so far as practicable, that in the event of a fall by any person the safeguard does not itself cause injury to that person: Sch 4 para 5.

11 'Personal fall protection system' means a fall prevention, work restraint, work positioning, fall arrest or rescue system, other than a system in which the only safeguards are collective safeguards, or, rope access and positioning techniques: Work at Height Regulations 2005, SI 2005/735, reg 2(1). In the case of a personal fall protection system, the requirements of the Work at Height Regulations 2005, SI 2005/735, Sch 5 Pt 1 (paras 1-4) must be complied with (reg 8(d)); and (1) in the case of a work positioning system Sch 5 Pt 2; (2) in the case of rope access Sch 5 Pt 3 (paras 1-3); (3) in the case of a fall arrest system Sch 5 Pt 4 (paras 1, 2); and (4) in the case of a work restraint system Sch 5 Pt 5 (reg 8(d)(i)-(iv)). A personal fall protection system must be used only if (a) a risk assessment has demonstrated that (i) the work can so far as is reasonably practicable be performed safely while using that system; and (ii) the use of other, safer work equipment is not reasonably practicable; and (b) the user and a sufficient number of available persons have received adequate training specific to the operations envisaged, including rescue procedures: Sch 5 Pt 1 para 1. A personal fall protection system must (A) be suitable and of sufficient strength for the purposes for which it is being used having regard to the work being carried out and any foreseeable loading; (B) where necessary, fit the user; (C) be correctly fitted; (D) be designed to minimise injury to the user and, where necessary, be adjusted to prevent the user falling or slipping from it, should a fall occur; and (E) be so designed, installed and used as to prevent unplanned or uncontrolled movement of the user: Sch 5 Pt 1 para 2. A personal fall protection system designed for use with an anchor must be securely attached to at least one anchor, and each anchor and the means of attachment to it must be suitable and of sufficient strength and stability for the purpose of supporting any foreseeable loading: Sch 5 Pt 1 para 3. Suitable and sufficient steps must be taken to prevent any person falling or slipping from a personal fall protection system: Sch 5 Pt 1 para 4.

A work positioning system must be used only if either (aa) the system includes a suitable backup system for preventing or arresting a fall; and (bb) where the system includes a line as a backup system, the user is connected to it; or (cc) where it is not reasonably practicable to comply with head (aa) above, all practicable measures are taken to ensure that the work positioning system does not fail: Sch 5 Pt 2. 'Line' includes rope, chain or webbing: reg 2(1).

Except as provided in Sch 5 Pt 3 para 3, a rope access or positioning technique must be used only if (I) it involves a system comprising at least two separately anchored lines, of which one, the 'working line', is used as a means of access, egress and support and the other is the safety line; (II) the user is provided with a suitable harness and is connected by it to the working line and the safety line; (III) the working line is equipped with safe means of ascent and descent and has a self-locking system to prevent the user falling should he lose control of his movements; and (IV) the safety line is equipped with a mobile fall protection system which is connected to and travels with the user of the system: Sch 5 Pt 3 para 1 (amended by SI 2007/114). Taking the risk assessment into account and depending in particular on the duration of the job and the ergonomic constraints, provision must be made for a seat with appropriate accessories: Work at Height Regulations 2005, Sch 5 Pt 3 para 2. The system may comprise a single rope where a risk assessment has demonstrated that the use of a second line would entail higher risk to persons and appropriate measures have been taken to ensure safety: Sch 5 Pt 3 para 3.

A fall arrest system must incorporate a suitable means of absorbing energy and limiting the forces applied to the user's body: Sch 5 Pt 4 para 1. A fall arrest system must not be used in a manner (a) which involves the risk of a line being cut; (b) where its safe use requires a clear zone, allowing for any pendulum effect, which does not afford such zone; or (c) which otherwise inhibits its performance or renders its use unsafe: Sch 5 Pt 4 para 2.

A work restraint system must be so designed that, if used correctly, it prevents the user from getting into a position in which a fall can occur, and must be used correctly: Sch 5 Pt 5.

12 Work at Height Regulations 2005, SI 2005/735, reg 8. 'Ladder' includes a fixed ladder and a stepladder: reg 2(1). The requirements that must be complied with are those set out in Sch 6: reg 8(e). Every employer must ensure that a ladder is used for work at height only if a risk assessment under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3, has demonstrated that the use of more suitable work equipment is not justified because of the low risk and either the short duration of use or existing features on site which he cannot alter: Work at Height Regulations 2005, Sch 6 para 1. Any surface upon which a ladder rests must be stable, firm, of sufficient strength and of suitable composition safely to support the ladder so that its rungs or steps remain horizontal, and any loading intended to be placed on it: Sch 6 para 2. A ladder must be so positioned as to ensure its stability during use: Sch 6 para 3. A suspended ladder must be attached in a secure manner and so that, with the exception of a flexible ladder, it cannot be displaced and swinging is prevented: Sch 6 para 4. A portable ladder must be prevented from slipping during use by (1) securing the stiles at or near their upper or lower ends; (2) an effective anti-slip or other effective stability device; or (3) any

other arrangement of equivalent effectiveness: Sch 6 para 5. A ladder used for access must be long enough to protrude sufficiently above the place of landing to which it provides access, unless other measures have been taken to ensure a firm handhold: Sch 6 para 6. No interlocking or extension ladder must be used unless its sections are prevented from moving relative to each other while in use: Sch 6 para 7. A mobile ladder must be prevented from moving before it is stepped on: Sch 6 para 8. Where a ladder or run of ladders rises a vertical distance of nine metres or more above its base, there must, where reasonably practicable, be provided at suitable intervals sufficient safe landing areas or rest platforms: Sch 6 para 9. Every ladder must be used in such a way that (a) a secure handhold and secure support are always available to the user; and (b) the user can maintain a safe handhold when carrying a load unless, in the case of a step ladder, the maintenance of a handhold is not practicable when a load is carried, and a risk assessment under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 has demonstrated that the use of a stepladder is justified because of (i) the low risk; and (ii) the short duration of use: Work at Height Regulations 2005, Sch 6 para 10.



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### **586. Fragile surfaces and falling objects.**

Every employer must ensure that no person at work passes across or near, or works on, from or near, a fragile surface<sup>1</sup> where it is reasonably practicable to carry out work safely and under appropriate ergonomic conditions without his doing so<sup>2</sup>. Where it is not reasonably practicable to carry out work safely and under appropriate ergonomic conditions without passing across or near, or working on, from or near, a fragile surface, employers must (1) ensure, so far as is reasonably practicable, that suitable and sufficient platforms, coverings, guard rails or similar means of support or protection are provided and used so that any foreseeable loading is supported by such supports or borne by such protection; (2) where a risk of a person at work falling remains despite the above measures being taken, take suitable and sufficient measures to minimise the distances and consequences of his fall<sup>3</sup>. Subject to certain exceptions<sup>4</sup>, where any person at work may pass across or near, or work on, from or near, a fragile surface, every employer must ensure that (a) prominent warning notices are so far as is reasonably practicable affixed at the approach to the place where the fragile surface is situated; or (b) where that is not reasonably practicable, such persons are made aware of it by other means<sup>5</sup>.

Where necessary to prevent injury to any person, suitable and sufficient steps must be taken by every employer to prevent, so far as is reasonably practicable, the fall of any material or object<sup>6</sup>. Where it is not reasonably practicable to comply with the above requirement, suitable and sufficient steps must be taken to prevent any person from being struck by any falling material or object which is liable to cause personal injury<sup>7</sup>.

Every employer must ensure that no material or object is thrown or tipped from height in circumstances where it is liable to cause injury to any person<sup>8</sup>. Materials and equipment must be stored in such a way as to prevent risk to any person arising from the collapse, overturning or unintended movement of such materials or objects<sup>9</sup>.

1 'Fragile surface' means a surface which would be liable to fail if any reasonably foreseeable loading were to be applied to it: Work at Height Regulations 2005, SI 2005/735, reg 2(1).

2 Work at Height Regulations 2005, SI 2005/735, reg 9(1). As to the activities to which these provisions do not apply see PARA 584.

3 Work at Height Regulations 2005, SI 2005/735, reg 9(2).

4 I.e. where members of the police, fire, ambulance or other emergency services are acting in an emergency: Work at Height Regulations 2005, SI 2005/735, reg 9(4).

5 Work at Height Regulations 2005, SI 2005/735, reg 9(3).

6 Work at Height Regulations 2005, SI 2005/735, reg 10(1).

7 Work at Height Regulations 2005, SI 2005/735, reg 10(2).

8 Work at Height Regulations 2005, SI 2005/735, reg 10(3).

9 Work at Height Regulations 2005, SI 2005/735, reg 10(4).

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**587. Danger areas.**

Every employer must<sup>1</sup> ensure that where a workplace contains an area in which owing to the nature of the work, there is a risk of a person at work falling a distance or being struck by a falling object, which is liable to cause personal injury, the workplace is so far as is reasonably practicable equipped with devices preventing unauthorised persons from entering the area and such areas are clearly indicated<sup>2</sup>.

<sup>1</sup> I.e. without prejudice to the requirements of the Work at Height Regulations 2005, SI 2005/735, regs 1-10.

<sup>2</sup> Work at Height Regulations 2005, SI 2005/735, reg 11. These provisions do not apply to an installation while the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 12 (see PARA 721) applies to it: Work at Height Regulations 2005, SI 2005/735, reg 3(5). As to further circumstances in which the provisions do not apply see PARA 584.

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### **588. Inspection of work equipment; inspection of places of work at height.**

In relation to certain work equipment<sup>1</sup> where the safety of the equipment depends on how it is installed or assembled, every employer must ensure that it is not used after installation or assembly in any position unless it has been inspected in that position<sup>2</sup>. Every employer must also ensure that work equipment exposed to conditions causing deterioration, which is liable to result in dangerous situations, must be inspected<sup>3</sup> at suitable intervals, and each time that exceptional circumstances which are liable to jeopardise the safety of the work equipment have occurred, to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time<sup>4</sup>.

Every employer must<sup>5</sup> ensure that a working platform<sup>6</sup> used for construction work<sup>7</sup> and from which a person could fall two metres or more is not used in any position unless it has been inspected in that position or, in the case of a mobile working platform, inspected on the site, within the previous seven days<sup>8</sup>. A person carrying out such an inspection must (1) before the end of the working period within which the inspection is completed, prepare a report containing the prescribed particulars<sup>9</sup>; and (2) within 24 hours of completing the inspection, provide the report or a copy thereof to the person on whose behalf the inspection was carried out<sup>10</sup>. An employer receiving such a report or copy must keep the report or a copy of it at the site where the inspection was carried out until the construction work is completed, and thereafter, at an office of his for three months<sup>11</sup>.

Every employer must ensure that no work equipment, other than lifting equipment to which certain requirements apply<sup>12</sup>, leaves the employer's undertaking or, if obtained from the undertaking of another person, is used in the employer's undertaking, unless it is accompanied by physical evidence that the last inspection required to be carried out has been carried out<sup>13</sup>.

Every employer must ensure that the result of an inspection under any of the above provisions is recorded and kept until the next inspection is recorded<sup>14</sup>.

So far as is reasonably practicable, every employer must ensure that the surface and every parapet, permanent rail or other such fall protection measure of every place of work at height<sup>15</sup> are checked on each occasion before the place is used<sup>16</sup>.

Where working under the control of another person, every person must report to that person any activity or defect relating to work at height which he knows is likely to endanger the safety of himself or another person<sup>17</sup>. Any work equipment or safety device provided to a person for work at height by his employer, or by a person under whose control he works, must be used by him in accordance with (a) any training in the use of the work equipment or device concerned which has been received by him; and (b) the instructions respecting that use which have been provided to him by that employer or person in compliance with the requirements and prohibitions imposed upon that employer or person by or under the relevant statutory provisions<sup>18</sup>.

1    le work equipment to which the Work at Height Regulations 2005, SI 2005/735, reg 8, Schs 2-6 apply (see PARA 585): reg 12(1). As to the meaning of 'work equipment' see PARA 584 note 4.

2    Work at Height Regulations 2005, SI 2005/735, reg 12(2).

3 Subject to the Work at Height Regulations 2005, SI 2005/735, reg 12(9), 'inspection' means such visual or more rigorous inspection by a competent person as is appropriate for safety purposes and includes any testing appropriate for those purposes; and 'inspected' is to be construed accordingly: reg 12(10).

4 Work at Height Regulations 2005, SI 2005/735, reg 12(3).

5 le without prejudice to the provisions of the Work at Height Regulations 2005, SI 2005/735, reg 12(2).

6 As to the meaning of 'working platform' see PARA 585 note 9.

7 As to the meaning of 'construction work' see PARA 585 note 8.

8 Work at Height Regulations 2005, SI 2005/735, reg 12(4).

9 The prescribed particulars are (1) the name and address of the person for whom the inspection was carried out; (2) the location of the work equipment inspected; (3) a description of the work equipment inspected; (4) the date and time of the inspection; (5) details of any matter identified that could give rise to a risk to the health or safety of any person; (6) details of any action taken as a result of any matter identified in head (5) above; (7) details of any further action considered necessary; and (8) the name and position of the person making the report: Work at Height Regulations 2005, SI 2005/735, reg 12(7), Sch 7.

10 Work at Height Regulations 2005, SI 2005/735, reg 12(7).

11 Work at Height Regulations 2005, SI 2005/735, reg 12(8). Any reference in these provisions to the keeping of a report or copy of a report or plan includes reference to its being kept in a form in which it is capable of being reproduced as a printed copy when required, and which is secure from loss or unauthorised interference: reg 2(2).

12 le the requirements of the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9(4): see PARA 520.

13 Work at Height Regulations 2005, SI 2005/735, reg 12(5).

14 Work at Height Regulations 2005, SI 2005/735, reg 12(6). This is subject to reg 12(8). Where a thorough examination has been made of lifting equipment under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9, it must, for the purposes of the Work at Height Regulations 2005, SI 2005/735, reg 12, other than reg 12(7), (8), be treated as an inspection of the lifting equipment; and the making under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 10 of a report of such examination for the purposes of the Work at Height Regulations 2005, SI 2005/735, reg 12(6) is to be treated as the recording of the inspection: reg 12(9).

15 As to the meaning of 'work at height' see PARA 584 note 1.

16 Work at Height Regulations 2005, SI 2005/735, reg 13.

17 Work at Height Regulations 2005, SI 2005/735, reg 14(1).

18 Work at Height Regulations 2005, SI 2005/735, reg 14(2).

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### **589. Special provision in relation to caving and climbing.**

Special provisions apply in relation to the application of the provisions for safety for work at height<sup>1</sup> to work concerning the provision of instruction or leadership to one or more persons in connection with their engagement in caving<sup>2</sup> or climbing<sup>3</sup> by way of sport, recreation, team building or similar activities<sup>4</sup>. In such circumstances, an employer, self-employed person or other person is to be taken to have complied with the caving and climbing requirements<sup>5</sup>, if, by alternative means to any requirement of those requirements, he maintains in relation to a person at such work as is referred to in above a level of safety equivalent to that required by those requirements<sup>6</sup>. For these purposes, in determining whether an equivalent level of safety is maintained, regard must be had to (1) the nature of the activity; (2) any publicly available and generally accepted procedures for the activity; and (3) any other relevant circumstances<sup>7</sup>.

1 See the Work at Height Regulations 2005, SI 2005/735. As to the meaning of 'work at height' see PARA 584 note 1.

2 For these purposes, 'caving' includes the exploration of parts of mines which are no longer worked: Work at Height Regulations 2005, SI 2005/735, reg 14A(4)(a) (reg 14A added by SI 2007/114).

3 For these purposes, 'climbing' means climbing, traversing, abseiling or scrambling over natural terrain or man-made structures: Work at Height Regulations 2005, SI 2005/735, reg 14A(4)(b) (as added: see note 2).

4 Work at Height Regulations 2005, SI 2005/735, reg 14A(1) (as added: see note 2).

5 'Caving and climbing requirements' means the Work at Height Regulations 2005, SI 2005/735, reg 8(d)(ii), so far as it relates to Sch 5 Pt 3 para 1 (see PARA 585 note 11): reg 14A(4)(c) (as added: see note 2).

6 Work at Height Regulations 2005, SI 2005/735, reg 14A(2) (as added: see note 2).

7 Work at Height Regulations 2005, SI 2005/735, reg 14A(3) (as added: see note 2).

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**590. Exemption for the armed forces.**

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by the provisions for safety for work at height<sup>1</sup> in respect of activities carried out in the interests of national security, and any such exemption may be granted subject to conditions and may be revoked by the Secretary of State by a certificate in writing at any time<sup>2</sup>. However, the Secretary of State must not grant any such exemption unless he is satisfied that the health and safety of the employees concerned are ensured as far as possible in the light of the objectives of the provisions for safety of work at height<sup>3</sup>.

1     le by the Work at Height Regulations 2005, SI 2005/735. As to the meaning of 'work at height' see PARA 584 note 1.

2     Work at Height Regulations 2005, SI 2005/735, reg 16(1).

3     Work at Height Regulations 2005, SI 2005/735, reg 16(2).

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### (iii) Diving Operations

#### 591. General duties relating to diving operations.

Every person who to any extent is responsible for, has control over or is engaged in a diving project<sup>1</sup> or whose acts or omissions could adversely affect the health and safety of persons engaged in such a project must take such measures as it is reasonable<sup>2</sup> for a person in his position to take to ensure that the Diving at Work Regulations 1997<sup>3</sup> are complied with<sup>4</sup>. Those regulations apply to and in relation to any diving project apart from the following:

- 887 (1) the care or treatment of patients in a hospital or other place, not under the control of the diving contractor<sup>5</sup>, where emergency medical treatment is provided or in transit to such hospital or place where the means of transit is provided by or in respect of the hospital or other place;
- 888 (2) operations in which members of the armed forces of the Crown or of a visiting force<sup>6</sup> are engaged in warfare or training for warfare;
- 889 (3) work carried out in any air which is compressed in order to prevent the ingress of ground water to the works or to stabilise the area around the works<sup>7</sup>.

The Health and Safety Executive<sup>8</sup> may, by a certificate in writing, exempt any person or class of persons, any diving operation<sup>9</sup> or class of diving operations and any plant or class of plant from any requirement or prohibition imposed by any provision of those regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time<sup>10</sup>. It may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to:

- 890 (a) the conditions, if any, which it proposes to attach to the exemption; and
- 891 (b) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>11</sup>.

There are various codes of practice for diving operations<sup>12</sup>.

1 'Diving project' means any activity, made up of one or more diving operations, in which at least one person takes part or will take part as a diver and extends from the time when that person, or the first such person, commences to prepare to dive until that person, or the last such person, has left the water, chamber or other environment in which the dive, or any part of the dive, took place and has completed any requisite decompression procedures, including, where it may be reasonably anticipated that this will be needed, any therapeutic recompression; and 'diver' means a person at work who dives: Diving at Work Regulations 1997, SI 1997/2776, reg 2(1). For these purposes, a person 'dives' if (1) he enters (a) water or any other liquid; or (b) a chamber in which he is subject to pressure greater than 100 millibars above atmospheric pressure; and (2) in order to survive in such an environment he breathes in air or other gas at a pressure greater than atmospheric pressure; and references to 'a dive' and 'dive' are to be construed accordingly: reg 2(2). As to the meaning of 'diving operation' see note 9.

2 As to what is reasonable see PARA 417.

3 le the Diving at Work Regulations 1997, SI 1997/2776: see the text and notes 4-11; and PARA 592 et seq.

4 Diving at Work Regulations 1997, SI 1997/2776, reg 4.

5 As to the diving contractor see PARA 592.

6 For these purposes, 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Diving at Work Regulations 1997, SI 1997/2776, reg 2(1).

7 Diving at Work Regulations 1997, SI 1997/2776, reg 3(1). The 1997 regulations apply to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Diving at Work Regulations 1997, SI 1997/2776, reg 3(2); Interpretation Act 1978 s 17(2).

8 As to the Health and Safety Executive see PARA 361 et seq.

9 'Diving operation' means a diving operation identified in the diving project plan pursuant to the Diving at Work Regulations 1997, SI 1997/2776, reg 8(3); and 'diving project plan' means a document prepared under reg 6(2)(a) in accordance with reg 8: reg 2(1). See PARA 592 note 12.

10 Diving at Work Regulations 1997, SI 1997/2776, reg 16(1).

11 Diving at Work Regulations 1997, SI 1997/2776, reg 16(2).

12 See eg the Approved Code of Practice on Commercial Diving Projects Offshore (ACoP L103; the Approved Code of Practice on Commercial Diving Projects Inland/Inshore (ACoP L104); the Approved Code of Practice on Recreational Diving Projects (ACoP L105); the Approved Code of Practice on Media Diving Projects (ACoP L106); and the Approved Code of Practice on Scientific and Archaeological Diving Projects (ACoP L107). As to codes of practice approved by the Health and Safety Executive see PARA 426.



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## **592. The diving contractor.**

No person at work may dive in a diving project<sup>1</sup> and no employer may employ any person in such a project unless there is one person and one person only who is the diving contractor for that project<sup>2</sup>. The diving contractor is the person who:

- 892 (1) is the employer of the diver or divers engaged in the diving project; or
- 893 (2) dives in the diving project as a self-employed<sup>3</sup> diver<sup>4</sup>.

Where there is more than one person falling within heads (1) and (2) above, those persons must jointly appoint in writing, before the commencement of the diving project, one of themselves to act as diving contractor<sup>5</sup>.

No person may act as a diving contractor unless the specified particulars<sup>6</sup> have been supplied in writing to the Health and Safety Executive by or in respect of that person<sup>7</sup> and where there is a change in any of the particulars so supplied the diving contractor must ensure that details of the change are forthwith supplied in writing to the Executive<sup>8</sup>. This does not, however, apply where each person (apart from any person at work) diving in the diving project does so for recreational purposes<sup>9</sup>.

The diving contractor must ensure, so far as is reasonably practicable<sup>10</sup>, that the diving project is planned, managed and conducted in a manner which protects the health and safety of all persons taking part in that project<sup>11</sup>. He must ensure that, before the commencement of the diving project, a diving project plan is prepared in respect of that project<sup>12</sup> and that the plan is thereafter updated as necessary during the continuance of the project<sup>13</sup>. Before the commencement of any diving operation<sup>14</sup> he must:

- 894 (a) appoint a person to supervise that operation<sup>15</sup>;
- 895 (b) make a written record of that appointment; and
- 896 (c) ensure that the person appointed is supplied with a copy of any part of the diving project plan which relates to that operation<sup>16</sup>.

As soon as possible after the appointment of a supervisor, the diving contractor must provide that supervisor with a written record of his appointment<sup>17</sup>.

The diving contractor must:

- 897 (i) ensure that there are sufficient people with suitable competence to carry out safely and without risk to health both the diving project and any action, including the giving of first aid, which may be necessary in the event of a reasonably foreseeable emergency connected with the diving project;
- 898 (ii) ensure that suitable and sufficient plant is available whenever needed to carry out safely and without risk to health both the diving project and any action, including the giving of first aid, which may be necessary in the event of a reasonably foreseeable emergency connected with the diving project;
- 899 (iii) ensure that the plant so made available is maintained in a safe working condition;

- 900 (iv) ensure, so far as reasonably practicable, that any person taking part in the diving project complies with the requirements and prohibitions imposed on him by or under the relevant statutory provisions<sup>18</sup> and observes the provisions of the diving project plan;
- 901 (v) ensure that a record containing the required particulars<sup>19</sup> is kept for each diving operation; and
- 902 (vi) retain the diving operation record<sup>20</sup> in his possession for at least two years after the date of the last entry in it<sup>21</sup>.

1 As to the meaning of 'diving project' see PARA 591 note 1.

2 Diving at Work Regulations 1997, SI 1997/2776, reg 5(1). As to the application of the 1997 regulations, and exemptions therefrom, see PARA 591.

3 As to the meaning of 'self-employed' see PARA 302 note 5.

4 Diving at Work Regulations 1997, SI 1997/2776, reg 5(2).

5 Diving at Work Regulations 1997, SI 1997/2776, reg 5(3).

6 I.e. the particulars listed in the Diving at Work Regulations 1997, SI 1997/2776, Sch 1: reg 7(1). Those particulars are (1) name, address and telephone number of the diving contractor; (2) legal status of the diving contractor (eg limited company, partnership, sole proprietor); (3) name, address and telephone number (where different from head (1) above) of the person to be contacted, in case of need, by the Health and Safety Executive; (4) the signature and full name of the person supplying the particulars; and (5) the date upon which the particulars are supplied: Sch 1 paras 1-5. As to the Health and Safety Executive see PARA 361 et seq.

7 Diving at Work Regulations 1997, SI 1997/2776, reg 7(1).

8 Diving at Work Regulations 1997, SI 1997/2776, reg 7(2).

9 Diving at Work Regulations 1997, SI 1997/2776, reg 7(3).

10 As to what is reasonably practicable see PARA 417.

11 Diving at Work Regulations 1997, SI 1997/2776, reg 6(1).

12 I.e. in accordance with the Diving at Work Regulations 1997, SI 1997/2776, reg 8: reg 6(2)(a). The diving project plan must be based on an assessment of the risks to the health and safety of any person taking part in the diving project and must consist of a record of the outcome of the planning carried out in accordance with reg 6(1) including all such information and instructions as are necessary to give advice to and to regulate the behaviour of those so taking part to ensure, so far as is reasonably practicable, their health and safety: reg 8(1). Without prejudice to the generality of reg 8(1), the diving project plan must identify any approved code of practice giving guidance on the 1997 regulations which will apply to the diving project: reg 8(2). The diving project plan must identify each diving operation which makes up the diving project and the nature and size of any diving operation so identified must be such that it can be safely supervised by one person: reg 8(3). As to codes of practice approved by the Health and Safety Executive see PARA 426.

13 Diving at Work Regulations 1997, SI 1997/2776, reg 6(2)(a).

14 As to the meaning of 'diving operation' see PARA 591 note 9.

15 I.e. in accordance with the Diving at Work Regulations 1997, SI 1997/2776, reg 9: see PARA 593. For these purposes, 'supervise' means the exercise of direct personal control; and 'supervising' is to be construed accordingly: reg 2(1).

16 Diving at Work Regulations 1997, SI 1997/2776, reg 6(2)(b).

17 Diving at Work Regulations 1997, SI 1997/2776, reg 6(2)(c).

18 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

19 For these purposes, the 'required particulars' means such particulars as are approved for the time being in writing by the Health and Safety Executive for the purposes of the Diving at Work Regulations 1997, SI

1997/2776, reg 6(3)(e) (see head (v) in the text); and any such approval may be given generally or in respect of any diving project or class of diving projects: reg 6(4).

20 'Diving operation record' means the record required to be kept in accordance with the Diving at Work Regulations 1997, SI 1997/2776, reg 6(3)(e) (see head (v) in the text): reg 2(1).

21 Diving at Work Regulations 1997, SI 1997/2776, reg 6(3).

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### **593. The diving supervisor.**

Only one supervisor<sup>1</sup> may be appointed to supervise<sup>2</sup> a diving operation<sup>3</sup> at any one time<sup>4</sup>; and no person may be appointed, or may act, as a supervisor unless he is competent and, where appropriate, suitably qualified to perform the functions of supervisor in respect of the diving operation which he is appointed to supervise<sup>5</sup>.

The supervisor must, in respect of the diving operation for which he has been appointed as supervisor, ensure that it is carried out, so far as is reasonably practicable<sup>6</sup>:

- 903 (1) without risk to the health and safety of all those taking part in that operation and of other persons who may be affected thereby;
- 904 (2) in accordance with the requirements and prohibitions imposed on him by or under any relevant statutory provisions; and
- 905 (3) in accordance, where this would not conflict with either head (1) or head (2) above, with the diving project plan<sup>7</sup>.

Before the commencement of the operation, he must ensure that each person taking part is aware of the contents of the diving project plan which relate to that operation<sup>8</sup>. During the course of the operation he must enter in the diving operation record<sup>9</sup> the required particulars<sup>10</sup>.

The supervisor must not dive during the diving operation which he is supervising unless:

- 906 (a) either:  
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  - 211. (i) he is guiding persons engaged in, or training persons to carry out or teach, recreational diving<sup>11</sup> and the persons taking part in the dive use only self-contained underwater breathing apparatus; or
  - 212. (ii) the dive is for archaeological, educational or scientific purposes, takes place in a tank or pool artificially constructed for the purpose of swimming or diving and the persons taking part in the dive use only self-contained underwater breathing apparatus; and
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  - 907 (b) the supervisor can so dive without risk to the health and safety of those taking part in that operation and of other persons who may be affected thereby; and
  - 908 (c) the diving project plan which relates to that operation specifically provides for the supervisor to dive as described in heads (a) and (b) above<sup>12</sup>.

A supervisor may, whilst supervising the diving operation in respect of which he is appointed, give such reasonable directions to any person taking part in that operation or who may affect the safety of that operation as are necessary to enable him to comply with the duties<sup>13</sup> set out above<sup>14</sup>.

<sup>1</sup> 'Supervisor' means a person appointed to supervise under the Diving at Work Regulations 1997, SI 1997/2776, reg 6(2)(b) (see PARA 592): reg 2(1).

- 2 As to the meaning of 'supervise' see PARA 592 note 15.
- 3 As to the meaning of 'diving operation' see PARA 591 note 9.
- 4 Diving at Work Regulations 1997, SI 1997/2776, reg 9(1). As to the application of the 1997 regulations, and exemptions therefrom, see PARA 591.
- 5 Diving at Work Regulations 1997, SI 1997/2776, reg 9(2).
- 6 As to what is reasonably practicable see PARA 417.
- 7 Diving at Work Regulations 1997, SI 1997/2776, reg 10(1)(a). As to the meaning of 'diving project plan' see PARA 591 note 9; and as to the meaning of 'relevant statutory provisions' see PARA 302 note 24.
- 8 Diving at Work Regulations 1997, SI 1997/2776, reg 10(1)(b).
- 9 As to the meaning of 'diving operation record' see PARA 592 note 20.
- 10 Diving at Work Regulations 1997, SI 1997/2776, reg 10(1)(c). The particulars referred to are those required by reg 6(4): see PARA 592.
- 11 For this purpose 'recreational diving' means diving which is carried out by a person for recreational purposes whilst he is not at work: Diving at Work Regulations 1997, SI 1997/2776, reg 10(2)(a)(i).
- 12 Diving at Work Regulations 1997, SI 1997/2776, reg 10(2).
- 13 le to comply with the Diving at Work Regulations 1997, SI 1997/2776, reg 10: see the text and notes 6-12.
- 14 Diving at Work Regulations 1997, SI 1997/2776, reg 11.

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**594. Duties of, and restrictions on, divers and persons engaged in a diving project.**

No diver<sup>1</sup> may dive in a diving project<sup>2</sup> unless he has an approved qualification<sup>3</sup> which is valid for any activity he may reasonably expect to carry out while taking part in the diving project<sup>4</sup> and has a valid certificate of medical fitness to dive<sup>5</sup>. The requirement for an approved qualification does not, however, apply to a diver who dives:

- 909 (1) as a part of training which, if successfully completed, would lead to the issue of an approved qualification;
- 910 (2) only by virtue of entering a chamber in order to provide emergency medical treatment; or
- 911 (3) as an actor or performer taking part in a live performance or the recording of a performance other than a person whose work normally involves work as a diver<sup>6</sup>.

Nor does that requirement, or the requirement set out below to maintain a daily record of his diving<sup>7</sup>, apply to a diver, other than a person whose work normally involves work as a diver, who dives for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who uses self-contained underwater breathing apparatus<sup>8</sup>. Subject to that exception, every diver engaged in a diving project must maintain a daily record of his diving and keep that record in his possession for at least two years after the date of the last entry in it<sup>9</sup>.

No person may dive in a diving project:

- 912 (a) unless he is competent to carry out safely and without risk to health any activity he may reasonably expect to carry out while taking part in the diving project; or
- 913 (b) if he knows of anything, including any illness or medical condition, which makes him unfit to dive<sup>10</sup>.

Every person engaged in a diving project must comply with any directions given to him by a supervisor<sup>11</sup> and, where they would not conflict with those directions, any instructions applicable to him in the diving project plan<sup>12</sup>.

1 As to the meaning of 'diver' see PARA 591 note 1.

2 As to the meaning of 'diving project' see PARA 591 note 1.

3 'Approved qualification' means such qualification as is approved by the Health and Safety Executive under the Diving at Work Regulations 1997, SI 1997/2776, reg 14: reg 2(1). The Executive may approve in writing such qualification as it considers suitable for the purpose of ensuring the adequate competence of divers for the purposes of reg 12(1)(a): reg 14(1). Any approval so given may be limited to any diver or class of divers or any dive or class of dive, may be subject to conditions or limited to time, and may be revoked in writing by the Executive at any time: reg 14(2). An approved qualification is not valid for the purposes of reg 12(1)(a) unless any limitation or any condition as to the approval of the qualification under reg 14 is satisfied or complied with and the approval has not been revoked: reg 14(3). As to the Health and Safety Executive see PARA 361 et seq. For transitional provisions see reg 17; and as to the application of the 1997 regulations, and exemptions therefrom, see PARA 591.

4 Diving at Work Regulations 1997, SI 1997/2776, reg 12(1)(a).

5 Diving at Work Regulations 1997, SI 1997/2776, reg 12(1)(b). A certificate of medical fitness to dive is a certificate from a medical examiner of divers (or from the Health and Safety Executive following an appeal under reg 15(4)) that the person issuing the certificate considers the person named in the certificate to be fit to dive: reg 15(1). A certificate of medical fitness to dive must state (1) the period (which must not exceed 12 months) during which the person issuing the certificate considers the person named in the certificate will remain fit to dive; and (2) any other limitations as to the nature or category of diving to which it relates: reg 15(2). A certificate of medical fitness to dive may be subject to conditions stated in the certificate and may be revoked at any time on medical grounds by a medical examiner of divers or the Executive: reg 15(3). Where a certificate of medical fitness to dive is (a) refused; (b) granted subject to limitations under reg 15(2); or (c) subjected to conditions or revoked under reg 15(3), by a medical examiner of divers, the person who applied for or holds the certificate may, within 28 days of the decision in question, appeal to the Executive against that decision; and the Executive must thereupon review the decision and if satisfied that the decision should be reversed or altered must issue a certificate to that effect: reg 15(4). A certificate of medical fitness to dive is not valid unless any limitation or any condition stated in it is satisfied or complied with and it has neither expired nor been revoked: reg 15(5). For these purposes, 'medical examiner of divers' means a medical practitioner who is, or who falls within a class of medical practitioners which is, for the time being, approved in writing by the Executive for the purposes of reg 15; and any such approval may be given generally or restricted to any class of diver or dive: reg 15(6). For transitional provisions see reg 17; and as to exemptions see PARA 591.

6 Diving at Work Regulations 1997, SI 1997/2776, reg 12(2).

7 I.e. the Diving at Work Regulations 1997, SI 1997/2776, reg 12(3): see the text and note 9.

8 Diving at Work Regulations 1997, SI 1997/2776, reg 12(4).

9 Diving at Work Regulations 1997, SI 1997/2776, reg 12(3).

10 Diving at Work Regulations 1997, SI 1997/2776, reg 13(1).

11 I.e. under the Diving at Work Regulations 1997, SI 1997/2776, reg 11: see PARA 593. As to the meaning of 'supervisor' see PARA 593 note 1.

12 Diving at Work Regulations 1997, SI 1997/2776, reg 13(2). As to the meaning of 'diving project plan' see PARA 591 note 9.

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#### **(iv) Operations involving Vibration**

##### **595. Operations involving vibration; in general.**

The health risks of using hand-held equipment in operations involving vibration have been recognised for many years<sup>1</sup> and the medical condition which may arise is a notifiable occupational disease<sup>2</sup>. Employers have a duty to limit a worker's exposure to such risks under their general common law duty of care<sup>3</sup> and the statutory duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees<sup>4</sup>. A European directive has now laid down minimum requirements for the protection of workers from risks to their health and safety arising or likely to arise from exposure to mechanical vibration, both hand-arm vibration<sup>5</sup> and whole-body vibration<sup>6</sup>. These requirements were required to be transposed into domestic law by 6 July 2005<sup>7</sup>.

1 See eg *Bowman v Harland and Wolff plc* [1992] IRLR 349 (a Northern Ireland case); *Doherty v Rugby Joinery Ltd* [2004] EWCA Civ 147, [2004] ICR 1272; *Woodland v Advocate General for Scotland* 2004 SC (D) 43/3, Ct of Sess (OH); *Brown v Corus (UK) Ltd* [2004] EWCA Civ 374, [2004] PIQR P476, [2004] All ER (D) 551 (Mar).

2 See PARA 406. As to the procedure for claims by former coal-miners see *Practice Direction (Coal Mining Hand Arm Vibration Syndrome (Vibration White Finger))* [2003] All ER (D) 06 (Aug), CA. As to the conduct of claims in relation to vibration white finger see *Rugby Joinery UK Ltd v Whitfield* [2005] EWCA Civ 561, [2006] PIQR Q40.

3 See PARA 412 et seq.

4 See PARA 421.

5 Ie the mechanical vibration that, when transmitted to the human hand-arm system, entails risks to the health and safety of workers, in particular vascular, bone or joint, neurological or muscular disorders.

6 See European Parliament and EC Council Directive 2002/44 (OJ L177, 06.07.2002, p 13) of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration). Whole-body vibration is defined by art 2 as the mechanical vibration that, when transmitted to the whole body, entails risks to the health and safety of workers, in particular lower-back morbidity and trauma of the spine.

7 See European Parliament and EC Council Directive 2002/44 (OJ L177, 06.07.2002, p 13) art 14. See the Control of Vibration at Work Regulations 2005, SI 2005/1093 (amended by SI 2006/557); and PARA 596.



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#### **596. Protection from exposure to vibration at work: risk assessment.**

Duties are placed on employers with a view to protecting their employees against risk to their health and safety arising from exposure to vibration at work<sup>1</sup>. Exposure limits and action values are imposed for hand-arm vibration<sup>2</sup> and whole body vibration<sup>3</sup>. An employer who carries out work which is liable to expose any of his employees to risk from vibration must make a suitable and sufficient assessment of the risk created by that work to the health and safety of those employees, and the risk assessment must identify the measures that need to be taken to meet the requirements of the relevant regulations<sup>4</sup>. In conducting the risk assessment<sup>5</sup>, the employer must assess daily exposure to vibration by means of:

- 914 (1) observation of specific working practices;
- 915 (2) reference to relevant information on the probable magnitude of the vibration corresponding to the equipment used in the particular working conditions; and
- 916 (3) if necessary, measurement of the magnitude of vibration to which his employees are liable to be exposed,

and the employer must assess whether any employees are likely to be exposed to vibration at or above an exposure action value or above an exposure limit value<sup>6</sup>.

The risk assessment must include consideration of:

- 917 (a) the magnitude, type and duration of exposure, including any exposure to intermittent vibration or repeated shocks;
- 918 (b) the effects of exposure to vibration on employees whose health is at particular risk from such exposure;
- 919 (c) any effects of vibration on the workplace and work equipment, including the proper handling of controls, the reading of indicators, the stability of structures and the security of joints;
- 920 (d) any information provided by the manufacturers of work equipment;
- 921 (e) the availability of replacement equipment designed to reduce exposure to vibration;
- 922 (f) any extension of exposure at the workplace to whole-body vibration beyond normal working hours, including exposure in rest facilities supervised by the employer;
- 923 (g) specific working conditions such as low temperatures; and
- 924 (h) appropriate information obtained from health surveillance<sup>7</sup> including, where possible, published information<sup>8</sup>.

The risk assessment must be reviewed regularly, and forthwith if there is reason to suspect that the risk assessment is no longer valid or there has been a significant change in the work to which the assessment relates, and where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>9</sup>. The employer must record the significant findings of the risk assessment as soon as is practicable after the risk assessment is made or changed, and the measures which he has taken and which he intends to take to meet

the requirements<sup>10</sup> relating to elimination or control of exposure to vibration and to information, instruction and training<sup>11</sup>.

1 See the Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 3(1). In those regulations, a reference to an employee being exposed to vibration is a reference to the exposure of that employee to mechanical vibration arising out of or in connection with his work: reg 2(2). 'Mechanical vibration' means vibration occurring in a piece of machinery or equipment or in a vehicle as a result of its operation: reg 2(1).

The regulations came into force on 6 July 2005 (reg 1) except for reg 6(4) (see PARA 597 note 6), which does not apply until 6 July 2010 or 6 July 2014 (reg 3(2), (3)). They implement in Great Britain European Parliament and EC Council Directive 2002/44 (OJ L177, 06.07.2002, p 13), as to which see PARA 595. The regulations apply to and in relation to any activity outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as those provisions apply within Great Britain: Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 12. As to the meaning of 'Great Britain' see PARA 305 note 7.

Where a duty is placed by the 2005 regulations on an employer in respect of his employees, he is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried out by the employer, except that the duties of the employer (1) under reg 7 (health surveillance: see PARA 598) do not extend to persons who are not his employees; and (2) under reg 8 (information, instruction and training: see PARA 597) do not extend to persons who are not his employees, unless those persons are on the premises where the work is being carried out: reg 3(4). The regulations apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee, except that reg 7 does not apply to a self-employed person: reg 3(5). The regulations do not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master, and for these purposes 'ship' includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy: reg 3(6). As to the meaning of 'self-employed' see PARA 302 note 5.

2 'Hand-arm vibration' means mechanical vibration which is transmitted into the hands and arms during a work activity: Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 2(1). For hand-arm vibration, the daily exposure limit value is 5 m/s<sup>2</sup> A(8), the daily exposure action value is 2.5 m/s<sup>2</sup> A(8), and daily exposure is to be ascertained on the basis set out in Sch 1 Pt I: reg 4(1). Schedule 1 is not set out in detail in this work. 'Daily exposure' means the quantity of mechanical vibration to which a worker is exposed during a working day, normalised to an 8-hour reference period, which takes account of the magnitude and duration of the vibration; and 'working day' means a daily working period, irrespective of the time of day when it begins or ends, and of whether it begins or ends on the same calendar day: reg 2(1).

3 'Whole-body vibration' means mechanical vibration which is transmitted into the body, when seated or standing, through the supporting surface, during a work activity or as described in the Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(3)(f) (see head (f) in the text): reg 2(1). For whole body vibration, the daily exposure limit value is 1.15 m/s<sup>2</sup> A(8), the daily exposure action value is 0.5 m/s<sup>2</sup> A(8), and daily exposure is to be ascertained on the basis set out in Sch 2 Pt I: reg 4(2). Schedule 2 is not set out in detail in this work.

4 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(1). The requirements are those of the 2005 regulations.

5 'Risk assessment' means the assessment of risk required by the Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5: reg 2(1).

6 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(2). 'Exposure action value' means the level of daily exposure set out in reg 4 for any worker which, if reached or exceeded, requires specified action to be taken to reduce risk; and 'exposure limit value' means the level of daily exposure set out in reg 4 for any worker which must not be exceeded, save as set out in reg 6(5) (see PARA 597): reg 2(1).

7 'Health surveillance' means assessment of the state of health of an employee, as related to exposure to vibration: Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 2(1). See further PARA 598.

8 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(3).

9 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(4).

10 See the requirements of the Control of Vibration at Work Regulations 2005, SI 2005/1093, regs 6, 8: see PARA 597.

11 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 5(5).



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### **597. Elimination or control of exposure to vibration at the workplace.**

The employer must ensure that risk from the exposure of his employees to vibration<sup>1</sup> is either eliminated at source or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable<sup>2</sup>. Where it is not reasonably practicable to eliminate risk at source and an exposure action value<sup>3</sup> is likely to be reached or exceeded, the employer must reduce exposure to as low a level as is reasonably practicable by establishing and implementing a programme of organisational and technical measures which is appropriate to the activity<sup>4</sup>.

The employer must (1) ensure that his employees are not exposed to vibration above an exposure limit value<sup>5</sup>; or (2) if an exposure limit value is exceeded, he must forthwith (a) reduce exposure to vibration to below the limit value; (b) identify the reason for that limit being exceeded; and (c) modify the measures taken in accordance with the above requirements to prevent it being exceeded again<sup>6</sup>. This does not apply, however, where the exposure of an employee to vibration is usually below the exposure action value but varies markedly from time to time and may occasionally exceed the exposure limit value, provided that (i) any exposure to vibration averaged over one week is less than the exposure limit value; (ii) there is evidence to show that the risk from the actual pattern of exposure is less than the corresponding risk from constant exposure at the exposure limit value; (iii) risk is reduced to as low a level as is reasonably practicable, taking into account the special circumstances; and (iv) the employees concerned are subject to increased health surveillance, where such surveillance is appropriate<sup>7</sup>.

The employer must adapt any measure taken in compliance with the above requirements to take account of any employee or group of employees whose health is likely to be particularly at risk from vibration<sup>8</sup>.

If the risk assessment<sup>9</sup> indicates that there is a risk to the health of his employees who are, or who are liable to be, exposed to vibration, or that employees are likely to be exposed to vibration at or above an exposure action value, the employer must provide those employees and their representatives with suitable and sufficient information, instruction and training<sup>10</sup>. Such information, instruction and training must be updated to take account of significant changes in the type of work carried out or the working methods used by the employer<sup>11</sup>. The employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under the relevant regulations<sup>12</sup> has suitable and sufficient information, instruction and training<sup>13</sup>.

1 As to the meaning of exposure of employees to vibration see PARA 596 note 1.

2 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(1). As to the application of the 2005 regulations see PARA 596. As to the meaning of 'reasonably practical' see PARA 417.

3 As to the meaning of 'exposure action value' see PARA 596 note 6.

4 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(2). The measures taken by the employer in compliance with the requirements of reg 6(1), (2) must be based on the general principles of prevention set out in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, Sch 1 (see PARA 433) and must include consideration of (1) other working methods which eliminate or reduce exposure to vibration; (2) choice of work equipment of appropriate ergonomic design which, taking account of the work to be done, produces the least possible vibration; (3) the provision of auxiliary equipment which reduces the risk of injuries caused by vibration; (4) appropriate maintenance programmes for work equipment, the workplace and workplace systems; (5) the design and layout of workplaces, work stations and rest facilities; (6) suitable

and sufficient information and training for employees, such that work equipment may be used correctly and safely, in order to minimise their exposure to vibration; (7) limitation of the duration and magnitude of exposure to vibration; (8) appropriate work schedules with adequate rest periods; and (9) the provision of clothing to protect employees from cold and damp: Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(3).

5 As to the meaning of 'exposure limit value' see PARA 596 note 6.

6 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(4). This is subject to reg 3(2) and (3) and reg 6(5): reg 6(4).

Regulation 6(4) does not apply until 6 July 2010 where work equipment is used which (1) was first provided to employees prior to 6 July 2007 by any employer; and (2) does not permit compliance with the exposure limit values, but in using such equipment the employer must take into account the latest technical advances and the organisational measures taken in accordance with reg 6(2): reg 3(2). For the agriculture and forestry sectors, reg 6(4) does not apply to whole-body vibration until 6 July 2014 in respect of work equipment which (a) was first provided to employees prior to 6 July 2007 by any employer; and (b) does not permit compliance with the exposure limit value for whole-body vibration, but in using such equipment the employer must take into account the latest technical advances and the organisational measures taken in accordance with reg 6(2): reg 3(3). As to the meanings of 'hand-arm vibration' and 'whole-body vibration' see PARA 596 notes 2, 3.

The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons from reg 6(4) in respect of activities carried out by emergency services which conflict with the requirements of that paragraph, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 9(1). The Executive must not grant any such exemption unless it is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of the 2005 regulations: reg 9(2). 'Emergency services' include (i) police, fire, rescue and ambulance services; (ii) Her Majesty's Coastguard: reg 2(1). As to the Health and Safety Executive see PARA 361 et seq.

The Executive may, by a certificate in writing, exempt any person or class of persons from reg 6(4) in respect of whole-body vibration in the case of air transport, where the latest technical advances and the characteristics of the workplace do not permit compliance with the exposure limit value despite the technical and organisational measures taken, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 10(1). The Executive must not grant any such exemption unless (A) it consults the employers and the employees or their representatives concerned; (B) the resulting risks are reduced to as low a level as is reasonably practicable; and (C) the employees concerned are subject to increased health surveillance, where such surveillance is appropriate within the meaning of reg 7(2) (see PARA 598): reg 10(2). As to the meaning of 'health surveillance' see PARA 596 note 7.

The Secretary of State for Defence may, by a certificate in writing, exempt any person or class of persons from reg 6(4) in respect of activities carried out in the interests of national security which conflict with the requirements of that provision, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 11(1). The Secretary of State must not grant any such exemption unless he is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of the 2005 regulations: reg 11(2).

7 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(5). The reference in the text is to health surveillance which is appropriate within the meaning of the Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(2) (see PARA 598): reg 6(5). Exposure within the meaning of reg 6(5) is to be ascertained on the basis set out in Sch 1 Pt II for hand-arm vibration and Sch 2 Pt II for whole-body vibration: reg 6(5).

8 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6(6).

9 As to the meaning of 'risk assessment' see PARA 596 note 5.

10 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 8(1). Without prejudice to the generality of reg 8(1), the information, instruction and training provided must include (1) the organisational and technical measures taken in order to comply with the requirements of reg 6; (2) the exposure limit values and action values set out in reg 4 (see PARA 596); (3) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings; (4) why and how to detect and report signs of injury; (5) entitlement to appropriate health surveillance under reg 7 and its purposes (see PARA 598); (6) safe working practices to minimise exposure to vibration; and (7) the collective results of any health surveillance undertaken in accordance with reg 7 in a form calculated to prevent those results from being identified as relating to a particular person: reg 8(2).

11 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 8(3).

12 Ie the Control of Vibration at Work Regulations 2005, SI 2005/1093.

- 13 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 8(4).

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### 598. Health assessment.

If the risk assessment<sup>1</sup> indicates that there is a risk to the health of his employees who are, or are liable to be, exposed to vibration<sup>2</sup> or employees are likely to be exposed to vibration at or above an exposure action value<sup>3</sup>, the employer must ensure that such employees are placed under suitable health surveillance, where such surveillance is appropriate<sup>4</sup>. Health surveillance, which must be intended to prevent or diagnose any health effect linked with exposure to vibration, is appropriate where the exposure of the employee to vibration is such that (1) a link can be established between that exposure and an identifiable disease or adverse health effect; (2) it is probable that the disease or effect may occur under the particular conditions of his work; and (3) there are valid techniques for detecting the disease or effect<sup>5</sup>.

The employer must ensure that a health record in respect of each of his employees who undergoes health surveillance is made and maintained and that the record or a copy thereof is kept available in a suitable form<sup>6</sup>. The employer must, on reasonable notice being given, allow an employee access to his personal health record and must provide the enforcing authority<sup>7</sup> with copies of such health records as it may require<sup>8</sup>.

Where, as a result of health surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a doctor or other occupational health professional to be the result of exposure to vibration, the employer of that employee must:

- 925 (a) ensure that a suitably qualified person informs the employee accordingly and provides the employee with information and advice regarding further health surveillance, including any health surveillance which he should undergo following the end of the exposure;
- 926 (b) ensure that he is himself informed of any significant findings from the employee's health surveillance, taking into account any medical confidentiality;
- 927 (c) review the risk assessment;
- 928 (d) review any measure taken to comply with the requirement to eliminate or control exposure to vibration in the workplace<sup>9</sup>, taking into account any advice given by a doctor or occupational health professional or by the enforcing authority;
- 929 (e) consider assigning the employee to alternative work where there is no risk from further exposure to vibration, taking into account any advice given by a doctor or occupational health professional; and
- 930 (f) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination where such an examination is recommended by a doctor or occupational health professional or by the enforcing authority<sup>10</sup>.

An employee to whom the above provisions apply must, when required by his employer and at the cost of his employer, present himself during his working hours for such health surveillance procedures as may be required for these purposes<sup>11</sup>.

1 As to the meaning of 'risk assessment' see PARA 596 note 5.

2 As to the meaning of 'exposure of employees to vibration' see PARA 596 note 1.

- 3 As to the meaning of 'exposure action value' see PARA 596 note 6.
- 4 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(1). As to the meaning of 'health surveillance' see PARA 596 note 7.
- 5 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(2).
- 6 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(3).
- 7 'Enforcing authority' means the Health and Safety Executive, local authority or Office of Rail Regulation, determined in accordance with the provisions of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (see PARAS 370, 372; **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195): Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 2(1) (definition substituted by SI 2006/557). As to the Health and Safety Executive see PARA 361 et seq.
- 8 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(4).
- 9 le to comply with the Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 6: see PARA 597.
- 10 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(5).
- 11 Control of Vibration at Work Regulations 2005, SI 2005/1093, reg 7(6).



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## **(v) Work in Confined Spaces**

### **599. Work in confined spaces.**

No person at work may enter a confined space<sup>1</sup> to carry out work for any purpose unless it is not reasonably practicable<sup>2</sup> to achieve that purpose without such entry<sup>3</sup>. Without prejudice to this provision, so far as is reasonably practicable, no person at work may enter or carry out any work in or (other than as a result of an emergency) leave a confined space otherwise than in accordance with a system of work<sup>4</sup> which, in relation to any relevant specified risks<sup>5</sup>, renders that work safe and without risks to health<sup>6</sup>.

No person at work may<sup>7</sup> enter or carry out work in a confined space unless there have been prepared in respect of that confined space suitable and sufficient arrangements for the rescue of persons in the event of an emergency, whether or not arising out of a specified risk<sup>8</sup>. Those arrangements are not<sup>9</sup> suitable and sufficient unless:

- 931 (1) they reduce, so far as is reasonably practicable, the risks to the health and safety of any person required to put the arrangements for rescue into operation; and
- 932 (2) they require, where the need for resuscitation of any person is a likely consequence of a relevant specified risk, the provision and maintenance of such equipment as is necessary to enable resuscitation procedures to be carried out<sup>10</sup>.

Whenever there arises any circumstance to which those arrangements relate, those arrangements, or the relevant part or parts of those arrangements, must immediately be put into operation<sup>11</sup>.

The relevant regulations<sup>12</sup> do not apply to or in relation to:

- 933 (a) the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities carried out solely by a ship's crew under the direction of the master; or
- 934 (b) any place below ground in a mine<sup>13</sup>; or
- 935 (c) any diving project<sup>14</sup> to and in relation to which the Diving at Work Regulations 1997<sup>15</sup> apply<sup>16</sup>;

but subject to that, they apply to and in relation to certain premises and activities outside Great Britain as they apply inside Great Britain<sup>17</sup>. Every employer must ensure compliance with the provisions of those regulations in respect of any work carried out by his employees and ensure compliance, so far as is reasonably practicable, with the provisions of those regulations in respect of any work carried out by persons other than his employees in so far as the provisions relate to matters which are within his control<sup>18</sup>. Self-employed persons are under a similar duty<sup>19</sup>.

The Health and Safety Executive<sup>20</sup> may, by a certificate in writing, exempt any person or class of persons or any type or class of confined space from the application of any of the requirements or prohibitions imposed by the relevant regulations, and any such exemption

may be granted subject to conditions and to a limit of time and may be revoked at any time by the Executive by a further certificate in writing<sup>21</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>22</sup>.

1 'Confined space' means any place, including any chamber, tank, vat, silo, pit, trench, pipe, sewer, flue, well or other similar space in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk: Confined Spaces Regulations 1997, SI 1997/1713, reg 1(2). As to the meaning of 'specified risk' see note 5.

2 As to what is reasonably practicable see PARA 417.

3 Confined Spaces Regulations 1997, SI 1997/1713, reg 4(1).

4 'System of work' includes the provision of suitable equipment which is in good working order: Confined Spaces Regulations 1997, SI 1997/1713, reg 1(2).

5 'Specified risk' means a risk of (1) serious injury to any person at work arising from a fire or explosion; (2) without prejudice to head (1) above: (a) the loss of consciousness of any person at work arising from an increase in body temperature; (b) the loss of consciousness or asphyxiation of any person at work arising from gas, fume, vapour or the lack of oxygen; (3) the drowning of any person at work arising from an increase in the level of a liquid; or (4) the asphyxiation of any person at work arising from a free flowing solid or the inability to reach a respirable environment due to entrapment by a free flowing solid; and 'free flowing solid' means any substance consisting of solid particles and which is of, or is capable of being in, a flowing or running consistency, and includes flour, grain, sugar, sand or other similar material: Confined Spaces Regulations 1997, SI 1997/1713, reg 1(2).

6 Confined Spaces Regulations 1997, SI 1997/1713, reg 4(2).

7 Ie without prejudice to the Confined Spaces Regulations 1997, SI 1997/1713, reg 4.

8 Confined Spaces Regulations 1997, SI 1997/1713, reg 5(1).

9 Ie without prejudice to the generality of the Confined Spaces Regulations 1997, SI 1997/1713, reg 5(1).

10 Confined Spaces Regulations 1997, SI 1997/1713, reg 5(2).

11 Confined Spaces Regulations 1997, SI 1997/1713, reg 5(3). As to contravention of this provision see PARA 859 head (2).

12 Ie the Confined Spaces Regulations 1997, SI 1997/1713: see the text and notes 1-11, 13-22.

13 For these purposes, 'mine' has the meaning assigned to it by the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1): Confined Spaces Regulations 1997, SI 1997/1713, reg 1(2).

14 For these purposes, 'diving project' has the meaning assigned to it by the Diving at Work Regulations 1997, SI 1997/2776, reg 2(1) (see PARA 591 note 1): Confined Spaces Regulations 1997, SI 1997/1713, reg 1(2) (definition substituted by SI 1997/2776).

15 Ie the Diving at Work Regulations 1997, SI 1997/2776: see PARA 591 et seq.

16 Confined Spaces Regulations 1997, SI 1997/1713, reg 2 (amended by SI 1997/2776). The reference in head (c) in the text to a diving project is to a diving project to which the Diving at Work Regulations 1997, SI 1997/2776, apply by virtue of reg 3 (see PARA 591): see the Confined Spaces Regulations 1997, SI 1997/1713, reg 2 (as so amended).

17 Subject to the Confined Spaces Regulations 1997, SI 1997/1713, reg 2, the 1997 regulations apply to and in relation to the premises and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80 apply by virtue of the Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001, SI 2001/2127, art 8(1)(a), (c), (e), (f) (see PARA 305) as they apply within Great Britain but they do not apply in any case where at the relevant time art 4, 5, 6 or 7 applies: Confined Spaces Regulations 1997, SI 1997/1713, reg 8; Interpretation Act 1978 s 17(2). As to the meaning of 'Great Britain' see PARA 305 note 7.

18    Confined Spaces Regulations 1997, SI 1997/1713, reg 3(1).

19    Every self-employed person must comply with the provisions of the 1997 regulations in respect of his own work and ensure compliance, so far as is reasonably practicable, with the provisions of those regulations in respect of any work carried out by other persons in so far as the provisions relate to matters which are within his control: Confined Spaces Regulations 1997, SI 1997/1713, reg 3(2). As to the meaning of 'self-employed' see PARA 302 note 5.

20    As to the Health and Safety Executive see PARA 361 et seq.

21    Confined Spaces Regulations 1997, SI 1997/1713, reg 6(1).

22    Confined Spaces Regulations 1997, SI 1997/1713, reg 6(2).

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## **(vi) Activities involving Genetic Modification**

### **600. Activities involving genetic modification; in general.**

The Genetically Modified Organisms (Contained Use) Regulations 2000<sup>1</sup> have effect with a view to protecting persons against risks to their health, whether immediate or delayed, arising from activities involving genetic modification<sup>2</sup> of organisms<sup>3</sup> and protecting the environment against harm from activities involving genetic modification of micro-organisms<sup>4</sup>. For these purposes, an 'activity involving genetic modification' means a contained use and a 'contained use' means an activity in which organisms are genetically modified or in which genetically modified organisms are cultured, stored, transported, destroyed, disposed of or used in any other way and for which physical, chemical or biological barriers, or any combination of such barriers, are used to limit their contact with, and to provide a high level of protection for, humans and the environment<sup>5</sup>.

For the purpose of the 2000 regulations and of Part I of the Health and Safety at Work etc Act 1974<sup>6</sup>, the meaning of 'work' is extended to include any activity involving genetic modification and the meaning of 'at work' is extended accordingly<sup>7</sup>.

The competent authority<sup>8</sup> may, by a certificate in writing, exempt any person or class of persons or any genetically modified organism or class<sup>9</sup> of genetically modified organisms, from all or any of the requirements of, or prohibitions imposed by, the 2000 regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>10</sup>. The competent authority may not, however, grant such an exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, that it proposes to attach to the exemption and to any requirements imposed by or under any enactments which apply to the case, it is satisfied about the following matters<sup>11</sup>:

- 936 (1) that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it; and
- 937 (2) that the environment will not be prejudiced in consequence of the exemption where the exemption is concerned with a requirement of, or a prohibition imposed by, those regulations which relates to an activity involving genetic modification of a micro-organism<sup>12</sup>.

The provisions of the Management of Health and Safety at Work Regulations 1992 and of the Control of Substances Hazardous to Health Regulations 2002 in relation to health surveillance<sup>13</sup> apply also to activities involving genetic modification. Guidance on the interaction between the Genetically Modified Organisms (Contained Use) Regulations 2000, the Control of Substances Hazardous to Health Regulations 2002 and other relevant legislation has been published by the Health and Safety Executive<sup>14</sup>.

<sup>1</sup> ie the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831 (see the text and notes 2-12; and PARA 601 et seq), which came into force on 15 November 2000 (reg 1).

2 'Genetic modification' in relation to an organism means the altering of the genetic material in that organism in a way that does not occur naturally by mating or natural recombination or both and within the terms of this definition (1) genetic modification occurs at least through the use of the techniques listed in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 2 Pt I; and (2) the techniques listed in Sch 2 Pt II are not considered to result in genetic modification, and 'genetically modified' is to be construed accordingly: reg 2(1). Examples of the techniques which constitute genetic modification which are referred to in head (1) above are (a) recombinant nucleic acid techniques involving the formation of new combinations of genetic material by the insertion of nucleic acid molecules, produced by whatever means outside an organism, into any virus, bacterial plasmid or other vector system and their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation; (b) techniques involving the direct introduction into an organism of heritable genetic material prepared outside the organism, including micro-injection, macro-injection and micro-encapsulation; (c) cell fusion or hybridisation techniques where live cells with new combinations of heritable genetic material are formed through the fusion of two or more cells by means of methods that do not occur naturally: Sch 2 Pt I (para 1). The following techniques are not considered to result in genetic modification provided that they do not involve the use of genetically modified organisms made by techniques other than those listed in Sch 2 Pt III (see note 4) or the use of recombinant nucleic acid molecules, namely (i) in vitro fertilisation; (ii) natural processes including conjugation, transduction or transformation; (iii) polyploidy induction: Sch 2 Pt II (para 2). As to the meaning of 'organism' see note 3.

3 'Organism' means a biological entity capable of replication or of transferring genetic material and includes a micro-organism, but does not include a human, human embryo or human admixed embryo; 'micro-organism' means a microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material, and includes a virus, a viroid, and an animal or plant cell in culture; 'human embryo' means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990 (apart from s 4A) by virtue of s 1(1), (6); and 'human admixed embryo' has the same meaning as it has in the Human Fertilisation and Embryology Act 1990 by virtue of s 4A(6), (11): Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1) (amended by SI 2009/1892). Genetically modified micro-organisms fall within the statutory definitions of a 'substance' for the purposes of the Health and Safety at Work etc Act 1974 (see PARA 302 note 7) and the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (see PARA 619 note 1).

4 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(1). For transitional provisions see reg 28, Sch 10. The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831 (except reg 17) (see PARA 603), do not apply to the genetic modification of organisms solely by any of the techniques referred to in Sch 2 Pt III nor to any organisms so modified: reg 3(2). Those techniques are the following techniques of genetic modification, provided that they do not involve the use of recombinant nucleic acid molecules or of genetically modified organisms other than those recombinant nucleic acid molecules or genetically modified organisms produced by one or more of the following techniques of genetic modification: (1) mutagenesis; (2) cell fusion (including protoplast fusion) of prokaryotic species which can exchange genetic material through homologous recombination; (3) cell fusion (including protoplast fusion) of cells of any eukaryotic species, including production of hybridomas and plant cell fusions; (4) self-cloning, where the resulting organism is unlikely to cause disease or harm to humans, animals or plants: Sch 2 Pt III para 3. For these purposes, 'self-cloning' means the removal of nucleic acid sequences from a cell of an organism which may or may not be followed by reinsertion of all or part of that nucleic acid (or a synthetic equivalent), whether or not altered by enzymic or mechanical processes, into cells of the same species or into cells of phylogenetically closely related species which can exchange genetic material by homologous recombination; and self-cloning may include the use of recombinant vectors, with an extended history of safe use in the particular organism, to manipulate and reinsert the nucleic acid sequences, but the vectors may not consist of any genetic elements other than those designed for vector structure, vector replication, vector maintenance or marker genes: Sch 2 Pt III para 4.

Nor do the 2000 regulations apply to any activity in which (a) genetically modified organisms are cultured, stored, transported, destroyed, disposed of or used, where such organisms are or are contained in (i) a product marketed in pursuance of either a consent granted by the Secretary of State, or, as regards Scotland, by the Scottish Ministers, or, as regards Wales, by the Welsh Ministers, under the Environmental Protection Act 1990 s 111(1), or a consent granted by the Northern Ireland Department of the Environment under the Genetically Modified Organisms (Northern Ireland) Order 1991 art 8(1), or a written consent given by the competent authority of an EEA state in accordance with EC Council Directive 90/220 (OJ L117, 08.05.1990, p 15) on the deliberate release into the environment of genetically modified organisms, art 13(4) (repealed) or European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) on the deliberate release into the environment of genetically modified organisms, art 15(3), 17(6), or 18(2), and, in any case, that activity is conducted in accordance with any conditions or limitations attached to that consent; (ii) a medicinal product for human or veterinary use marketed in accordance with EC Council Regulation 2309/93 (OJ L214, 24.08.1993, p 1) or European Parliament and EC Council Regulation 726/2004 (OJ L36, 30.4.2004, p 1) laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency; or (iii) food or feed authorised in accordance with the provisions of European Parliament and EC Council Regulation 1829/2003 (OJ L268, 18.10.2003, p 1) on genetically modified food and feed; or (iv) food products notified to the European Commission in accordance

with the provisions of European Parliament and EC Council Regulation 1829/2003 (OJ L268, 18.10.2003, p 1) art 8.1, or feed products notified to the Commission in accordance with the provisions of art 20.1; or (b) genetically modified organisms are released or marketed in cases or circumstances in which the consent of the Secretary of State, or, as regards Scotland, the Scottish Ministers, or, as regards Wales, by the Welsh Ministers, is required under the Environmental Protection Act 1990 s 111(1), or the consent of the Northern Ireland Department of the Environment is required under the Genetically Modified Organisms (Northern Ireland) Order 1991 art 8(1): Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3) (amended by SI 2005/2466 and SI 2005/2759); Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(d). For these purposes, 'product' means a product consisting of or containing a genetically modified organism or a combination of genetically modified organisms: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(7). 'EEA state' means a state, other than the United Kingdom, which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and adopted as respects the United Kingdom by the European Economic Area Act 1993: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

Regulations 8-15, 17(2), (3), 18, 19 (see PARA 601 et seq) do not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4). Regulation 6 (see PARA 601) does, however, apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air, except that, in making the assessment required by reg 6(1), the person undertaking that assessment is not required to include the steps set out in Sch 3 Pt II para 3(h)-(j): reg 3(5). The 2000 regulations do not extend to Northern Ireland: reg 3(6).

5 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).

6 The Health and Safety at Work etc Act 1974 Pt I (ss 1-54).

7 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 4. The Health and Safety at Work etc Act 1974 ss 2(1), (2), (3), 7 (see PARAS 421, 446) are to be modified in relation to an activity involving genetic modification so as to have effect as if the reference to an employer therein includes a reference to an educational establishment providing a course of study, and the reference to an employee therein includes a reference to a student of that educational establishment and that student is to be treated as the employee of that educational establishment, to the extent that the activity involving genetic modification is under the control of that educational establishment; and s 3(2) is to be modified in relation to an activity involving genetic modification so as to have effect as if the reference therein to a self-employed person is a reference to any person (except a student) who is not an employer or an employee and the reference to his undertaking includes a reference to such an activity: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 5(1), (2). For these purposes, 'educational establishment' means a university, [former] polytechnic, college, school or similar educational or technical institute; and 'student' means any person studying at an educational establishment: reg 5(3).

8 'Competent authority' means, as regards England and Wales, the Secretary of State and the Health and Safety Executive, acting jointly; and as regards Scotland, the Scottish Ministers and the Executive, acting jointly, and the expressions 'competent authority as regards England and Wales' and 'competent authority as regards Scotland' are to be construed accordingly: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1) (amended by virtue of SI 2002/794). As to the Health and Safety Executive see PARA 361 et seq.

9 'Class', in relation to an activity involving genetic modification of micro-organisms, means one of the four classes described in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 1: reg 2(1). Those classes are: (1) activities of no or negligible risk, for which containment level 1 is appropriate to protect human health and the environment; (2) activities of low risk, for which containment level 2 is appropriate to protect human health and the environment; (3) activities of moderate risk, for which containment level 3 is appropriate to protect human health and the environment; and (4) activities of high risk, for which containment level 4 is appropriate to protect human health and the environment: Sch 1. In relation to an activity involving genetic modification, any reference to an appropriate containment level is a reference to the containment level assigned to that activity in accordance with Sch 3 Pt II paras 3(h), 4 (see PARA 601 note 3): reg 2(2)(a).

10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25(1).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25(2).

12 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25(3).

13 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 6; and PARA 435; the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11; and PARA 624.

14 At the date at which this title states the law, details of the published guidance and further information were available on the Health and Safety Executive's internet site at [www.hse.gov.uk](http://www.hse.gov.uk). See in particular the SACGM Compendium of Guidance (guidance from the Health and Safety Executive's advisory committee on genetic modification prepared in consultation with the Executive) which was published in January 2007 and is available at: [www.hse.gov.uk/biosafety/gmo/acgm/acgmcomp](http://www.hse.gov.uk/biosafety/gmo/acgm/acgmcomp). As to the status of such guidance see *PARA 371*.

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# **601. Risk assessment of activities involving genetic modification.**

No person may undertake any activity:

- 938 (1) involving genetic modification<sup>1</sup> of micro-organisms<sup>2</sup> unless, before commencing that activity, he has ensured that a suitable and sufficient assessment of the risks created thereby to human health and the environment has been carried out<sup>3</sup>;
- 939 (2) involving genetic modification of organisms other than micro-organisms unless, before commencing that activity, he has ensured that a suitable and sufficient assessment of the risks created thereby to human health has been carried out<sup>4</sup>.

Where either there is reason to suspect that an assessment<sup>5</sup> is no longer valid or there has been a significant change in the activity involving genetic modification to which an assessment relates, the person undertaking the activity involving genetic modification to which the assessment relates must ensure that the assessment is reviewed forthwith<sup>6</sup>.

The person undertaking an activity involving genetic modification:

- 940 (a) must keep a record of the assessment relating to that activity, and any review of that assessment, for at least ten years from the date of the cessation of that activity; and
- 941 (b) must make such record available to the competent authority<sup>7</sup> when requested to do so<sup>8</sup>.

1 As to the meaning of 'activity involving genetic modification' see PARA 600.

2 As to the meaning of 'micro-organism' see PARA 600 note 3.

3 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6(1). As to the application of the 2000 regulations, and exemptions therefrom, see PARA 600.

The person carrying out an assessment required by reg 6(1) must take into account the matters set out in Sch 3 Pt I and include the steps set out in Sch 3 Pt II: reg 6(2). The following matters must be taken into account in carrying out an assessment for the purposes of reg 6: (1) any potentially harmful effects, in particular those associated with (a) the recipient micro-organism; (b) the inserted genetic material (originating from the donor organism); (c) the vector; (d) the donor micro-organism (where that donor micro-organism is used during the activity involving genetic modification); and (e) the resulting genetically modified micro-organism; (2) the characteristics of the activity; (3) the severity of the potentially harmful effects; and (4) the likelihood of the potentially harmful effects being realised: Sch 3 Pt I para 1. For these purposes, 'potentially harmful effects' includes (i) disease to humans including allergenic or toxic effects; (ii) disease to animals or plants; (iii) adverse effects resulting from the inability to treat disease or offer an effective prophylaxis; (iv) adverse effects resulting from establishment or dissemination of the genetically modified micro-organisms in the environment; (v) adverse effects resulting from the natural transfer of genetic material to or from other organisms; (vi) adverse effects resulting from the likely interaction of the genetically modified micro-organism with other organisms at the premises where the activity involving genetic modification is to be conducted: Sch 3 Pt I para 2.

An assessment carried out for the purposes of reg 6 must include the following steps: (A) identification of any harmful properties of the recipient and, where appropriate, the donor micro-organism; (B) identification of any harmful properties associated with the vector or inserted material, including any alteration in the recipient's



existing properties; (c) consideration of relevant Community legislation, including EC Council Directive 90/679 (OJ L374, 31.12.1990, p 1) on the protection of workers from risks related to exposure to biological agents at work, other classification schemes referring to plant and animal pathogens, and other international and national classification schemes for genetically modified micro-organisms; (d) identification of the provisional level of risk associated with the genetically modified micro-organism; (e) consideration of the characteristics of the environment likely to be exposed, the characteristics of the activity involving genetic modification of micro-organisms, and any activities involving genetic modification of micro-organisms which cannot be adequately controlled by standard laboratory procedures, and which present risks which require controls for each individual case; (f) adjustment of the provisional level of risk in the light of the matters referred to in head (e) above; (g) selection of the appropriate containment measures from those specified in the applicable Table in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 8 on the basis of the provisional level of risk as adjusted in accordance with head (f) above; (h) assignment of the activity involving genetic modification of micro-organisms to the appropriate containment level, in accordance with Sch 3 para 4; (i) classification of that activity in the class of the same number as that of the appropriate containment level; and (j) review and reconsideration of that classification in the light of the completed assessment: Sch 3 Pt II para 3. To assign an activity involving genetic modification of micro-organisms to the appropriate containment level for the purposes of head (h) above, the person carrying out the assessment for the purposes of reg 6 must (aa) first identify for each selected containment measure the column in the applicable Table in Sch 8 having the lowest number in which that selected containment measure is shown as being required, regardless of whether or not such requirement is subject to any qualification; (bb) then select the highest number of all the columns identified in accordance with head (aa) above; and (cc) then assign the activity involving genetic modification in question to the containment level of that highest number; and 'selected containment measure' means an appropriate containment measure selected in accordance with head (g) above: Sch 3 Pt II paras 4, 5. Schedule 8 is not set out in detail in this work.

4 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 7(1). The person carrying out an assessment so required must take into account the matters set out in Sch 4 Pt I and include the steps set out in Sch 4 Pt II: reg 7(2). The following matters must be taken into account in carrying out an assessment for the purposes of reg 7: (1) the identification of any potentially harmful effects, in particular those associated with (a) the recipient organism; (b) the inserted genetic material (originating from the donor organism); (c) the vector; (d) the donor organism; and (e) the resulting genetically modified organism; (2) the characteristics of the activity involving genetic modification; (3) the severity of the potentially harmful effects; and (4) the likelihood of the potentially harmful effects being realised: Sch 4 Pt I para 1. For these purposes, 'potentially harmful effects' includes (i) disease to humans including allergenic or toxic effects; (ii) acting as a human disease vector or reservoir; (iii) adverse effects to humans arising from change in behaviour or in physical nature; (iv) adverse effects arising from the inability to treat human disease or offer effective prophylaxis: Sch 4 Pt I para 2. An assessment carried out for the purposes of reg 7 must include the following steps: (A) identification of the harmful properties of the recipient and, where appropriate, the donor organism; (B) identification of any harmful properties associated with the vector or inserted material, including any alteration in the existing properties of the recipient; (C) identification of the provisional level of risk associated with the genetically modified organisms; (D) selection of containment and other protective measures on the basis of (aa) the provisional level of risk; and (bb) the characteristics of the activity involving genetic modification; (E) adjustment of the level of risk in the light of the matters referred to in head (d) above; and (F) review and reconsideration of the containment and other protective measures in the light of the steps required by heads (A)-(E) above: Sch 4 Pt III para 3.

5 For these purposes, 'assessment' means an assessment carried out for the purposes of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6 or reg 7: reg 8(3).

6 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 8(1).

7 As to the meaning of 'competent authority' see PARA 600 note 8.

8 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 8(2).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(1) GENERAL PROCESSES AND ACTIVITIES/(vi) Activities involving Genetic Modification/602. Notification of activities involving genetic modification.

## **602. Notification of activities involving genetic modification.**

No person may use premises<sup>1</sup> for the first time for the purpose of undertaking an activity involving genetic modification<sup>2</sup>, unless he has submitted to the competent authority<sup>3</sup> a notification informing it of his intention to do so and containing the specified information<sup>4</sup> and he has received an acknowledgment from the Health and Safety Executive<sup>5</sup> of receipt of that notification<sup>6</sup>. Within ten working days<sup>7</sup> of the competent authority receiving a notification so submitted, the Executive must send to the notifier<sup>8</sup> an acknowledgment of receipt<sup>9</sup>.

Subject to the following provisions, no person may undertake an activity involving genetic modification of micro-organisms in class 2<sup>10</sup> unless he has submitted a notification to the competent authority informing it of his intention to do so and containing the specified information<sup>11</sup>. Within ten working days of the competent authority receiving a notification so submitted, the Executive must send to the notifier an acknowledgment of receipt<sup>12</sup>. The competent authority must ensure that any required emergency plan<sup>13</sup> has been prepared<sup>14</sup>. Furthermore, no person may undertake:

942 (1) for the first time such an activity at the premises referred to in a notification so submitted unless:

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213. (a) at least 45 days, or such shorter period of time as the competent authority may approve in writing, have elapsed since the date on which the acknowledgment was sent<sup>15</sup> and the competent authority has not within that period of 45 days or the shorter period of time approved by the competent authority, as the case may be, informed the notifier that he must not undertake the activity in question; or

214. (b) he has received the acknowledgment required<sup>16</sup> and consent for activities involving genetic modification in class 3 or 4<sup>17</sup> has already been granted in respect of the premises to which the notification so submitted refers<sup>18</sup>;

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943 (2) for the second or subsequent times an activity referred to above at the premises referred to in a notification so submitted unless he has received the acknowledgment required<sup>19</sup>.

Where a person submits a notification in accordance with these provisions<sup>20</sup> in respect of such an activity which is not to be undertaken for the first time at the premises referred to in the notification, with the notification that person may request that the competent authority makes a decision whether or not to agree to his undertaking the activity in question<sup>21</sup>. The competent authority must make a decision so requested within 45 days of the date on which the acknowledgment was sent<sup>22</sup>.

Subject to the following provisions, no person may undertake an activity involving genetic modification of micro-organisms in class 3 or class 4 unless he has submitted to the competent authority a notification informing it of his intention to do so and containing the specified information<sup>23</sup> and received the written consent of the competent authority to undertake the activity in question<sup>24</sup>. Within ten working days of the competent authority receiving a notification so submitted, the Executive must send to the notifier an acknowledgment of receipt<sup>25</sup>. Where a person proposes to undertake such an activity for the first time at the

premises referred to in a notification so submitted, the competent authority must inform that person in writing of its decision to grant or refuse consent to undertake the activity in question not more than 90 days after the acknowledgment was so sent<sup>26</sup>. Where a person proposes to undertake such an activity for the second or subsequent times at the premises referred to in a notification so submitted, the competent authority must inform that person in writing of its decision to grant or refuse consent to undertake the activity in question not more than 45 days after the acknowledgment was so sent<sup>27</sup>. Before granting a consent<sup>28</sup>, the competent authority must ensure that any emergency plan has been prepared<sup>29</sup>; and before deciding whether to grant or refuse such a consent, the competent authority must take into account any representations made to it by any person within 30 days of the date on which the Executive so sent the acknowledgment of receipt<sup>30</sup>. A consent granted pursuant to these provisions may be granted subject to conditions<sup>31</sup>.

Subject to the following provisions, no person may undertake an activity involving genetic modification of organisms other than micro-organisms unless he has submitted to the competent authority a notification informing it of his intention to do so and containing the specified information<sup>32</sup>. This does not, however, apply to an activity involving genetic modification of organisms where that genetic modification results in a genetically modified organism (other than a micro-organism) which poses no greater risk to humans than its unmodified parental organism<sup>33</sup>. Within ten working days of the competent authority receiving a notification so submitted, the Executive must send to the notifier an acknowledgment of receipt<sup>34</sup>. No person may undertake any such activity unless at least 45 days, or such shorter period of time as the competent authority may approve in writing, have elapsed since the date on which the acknowledgment was so sent and the competent authority has not within that period of 45 days or the shorter period of time approved by the competent authority, as the case may be, informed the notifier that he must not undertake the activity in question<sup>35</sup>.

The competent authority may at any time by notice in writing to the person undertaking or proposing to undertake an activity involving genetic modification:

- 944 (i) set a limit of time for, or impose conditions with regard to, that activity;
- 945 (ii) require that person to suspend, to terminate or not to commence that activity, as the case may be;
- 946 (iii) revoke or vary a consent granted to that person<sup>36</sup>,

and the person to whom the notice is addressed must comply with that notice<sup>37</sup>.

A notifier must forthwith send to the competent authority full details in writing of the specified matters<sup>38</sup>.

A notifier may withdraw his notification by giving written notice to the competent authority, provided that the notifier has not commenced the activity involving genetic modification to which the notification relates<sup>39</sup>.

Subject to an exception in the interests of national security<sup>40</sup>, the competent authority must maintain a register of every notification submitted under the above provisions<sup>41</sup>.

1 As to the meaning of 'premises' see PARA 302 note 6.

2 As to the meaning of 'activity involving genetic modification' see PARA 600.

3 As to the meaning of 'competent authority' see PARA 600 note 8.

4 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1)(a). The specified information is that specified in Sch 5. A notification required for these purposes must contain the following information: (1) the name, address and telephone number and any fax number and any email address of the notifier; (2) the name of the employee of the notifier with specific responsibility for the supervision and safety of activities involving genetic modification; (3) information on the training and qualifications of that

employee; (4) details of the genetic modification safety committee established pursuant to reg 16 (see PARA 603); (5) the address of the premises where the activity involving genetic modification is to be carried out and a general description of the premises; (6) the nature of the work to be undertaken; (7) the class of any activity involving genetic modification of micro-organisms; (8) where the first activity to be carried out in those premises is an activity involving genetic modification in class 1 (a) a summary of the assessment of that activity made for the purposes of reg 6(1) (see PARA 601); (b) any advice received in relation to that assessment from the genetic modification safety committee established pursuant to reg 16; (c) information on waste management; and (d) confirmation that the emergency services and any body or authority liable to be affected by an accident to which any emergency plan relates will be informed of the contents of the emergency plan and of any relevant revisions made in pursuance of reg 20(3) (see PARA 603); and (9) where the first activity to be carried out in those premises involves genetic modification of organisms which are not micro-organisms and that activity is not notifiable under reg 12(1) (see the text and note 32), a copy of the assessment made for the purposes of reg 7(1) (see PARA 601), and confirmation that the emergency services and any body or authority liable to be affected by an accident to which any emergency plan relates will be informed of the contents of the plan and of any relevant revisions made in pursuance of reg 20(3): Sch 5. 'Accident' means an incident involving a significant and unintended release of genetically modified organisms in the course of an activity involving genetic modification which presents an immediate or delayed hazard to human health or to the environment: reg 2(1). As to the meanings of 'organism' and 'micro-organism' see PARA 600 note 3; and as to classes of activity see PARA 600 note 9.

Anything required to be submitted or sent to the competent authority pursuant to the 2000 regulations must be submitted or sent in writing to the competent authority at Magdalen House, Stanley Precinct, Bootle, Merseyside L20 3QZ: reg 15(8). Where a notification is required under reg 9(1) in respect of premises which are situated on the border of England and Scotland; or under reg 10(1), 11(1) or 12(1) (see the text and notes 11, 23-24, 32) in respect of an activity involving genetic modification which is to take place in premises situated on the border of England and Scotland, the notifier must submit a single notification under the regulation in question to the joint competent authority: reg 13(1) (amended by SI 2005/2466). 'Joint competent authority' means the competent authority as regards England and Wales and the competent authority as regards Scotland, acting jointly: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). In relation to a notification submitted in accordance with reg 13(1), any reference to the competent authority is to be construed as a reference to the joint competent authority: reg 2(2)(c).

The competent authority must examine a notification submitted under reg 9(1), 10(1), 11(1) or 12(1) for (i) conformity with the requirements of the 2000 regulations; (ii) the accuracy and completeness of the information provided; (iii) the correctness of the assessment carried out pursuant to reg 6(1) or 7(1) and submitted to the competent authority with the notification; (iv) the adequacy of the waste management and emergency response measures submitted with the notification; and (v) in the case of a notification submitted under reg 10(1) or reg 11(1), the correctness of the class assigned to the activity involving genetic modification of micro-organisms: reg 14(1). For the purpose of carrying out an examination of a notification in accordance with reg 14(1), the Executive may request in writing the notifier to provide such additional information relating to the notification as it may specify, and, in such a case, when so requested by the Executive, the notifier may not begin nor, subject to reg 14(3), continue, as the case may be, the activity involving genetic modification until the competent authority has given its approval in writing: reg 14(2).

Where the person who submitted a notification pursuant to reg 9(1), 10(1), or 12(1) has commenced the activity involving genetic modification before the Executive requests additional information in accordance with reg 14(2), the Executive may give to that person instructions concerning the cessation of the activity involving genetic modification; that person must comply with any such instructions; and subject to any such instructions, that person may continue the activity involving genetic modification only to the extent necessary in order to store or destroy all genetically modified organisms resulting from the activity since its commencement: reg 14(3). If requested to do so by the Secretary of State or by the Scottish Ministers, the Executive must request additional information under reg 14(2): reg 14(4). Within ten working days, the Executive must acknowledge receipt of all additional information provided in response to a request made by the Executive under reg 14(2): reg 14(5). The period of time between the date when the Executive requests additional information in accordance with reg 14(2) and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 10(4), 10(6), 11(3), 11(4) or 12(4), as the case may be: reg 14(6).

Where (A) a notifier under reg 9(1) has not commenced any activity involving genetic modification, or a notifier under reg 10(1), 11(1) or 12(1) has not commenced the activity relating to genetic modification to which his notification relates; and (B) the Executive requests additional information pursuant to reg 14(2); and (C) the notifier in question does not provide that information within a period of six months of the date on which the Executive sent the request, the competent authority may return the notification to that notifier: reg 14(7).

5 As to the Health and Safety Executive see PARA 361 et seq.

6 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1)(b).

7 'Working day' means any day other than a Saturday, a Sunday, Christmas Day or Good Friday, or a bank holiday within the meaning given by the Banking and Financial Dealings Act 1971: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).

8 'Notifier' means a person who has submitted a notification to the competent authority pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1), 10(1), 11(1) or 12(1): reg 2(1).

9 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(2).

10 For these purposes, any reference to an activity involving genetic modification in a numbered class is a reference to an activity involving genetic modification of micro-organisms which has been classified as belonging to the class of that number in accordance with Sch 3 Pt II para 3(i) and (j) (see PARA 601 note 3): reg 2(2)(b).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(1). The specified information is that specified in Sch 6 Pt I. A notification required for the purposes of reg 10(1) must contain the following information: (1) the name, address and telephone number and any fax number and any email address of the notifier; (2) the centre number allocated by the competent authority in respect of the premises at which the activity involving genetic modification of micro-organisms is to be undertaken and the date of the notification required by reg 9(1) relating to those premises; (3) the name of the employee of the notifier with specific responsibility for supervision and safety; (4) information on the training and qualifications of that employee; (5) the recipient or parental micro-organism to be used; (6) the donor micro-organism to be used; (7) where applicable, the host-vector system to be used; (8) the source and intended function of the genetic material involved in the modification; (9) the identity and characteristics of the genetically modified micro-organism; (10) the purpose of the activity involving genetic modification of micro-organisms, including its expected results; (11) the approximate culture volumes to be used; (12) a description of the containment and other protective measures to be applied, including (a) information on waste management, including the type and form of wastes to be generated, their treatment, ultimate form and destination; and (b) justification for not applying any containment measure at containment level 2; (13) a copy of the assessment carried out pursuant to reg 6(1); (14) any advice received in relation to that assessment from the genetic modification safety committee established pursuant to reg 16; (15) the information necessary for the competent authority to evaluate any emergency plan; and (16) confirmation that the emergency services and any body or authority liable to be affected by an accident to which any emergency plan relates will be informed of the contents of the plan and of any relevant revisions made in pursuance of reg 20(3): Sch 6 Pt I para 1. For these purposes, 'emergency plan' means a plan required by virtue of reg 20; and 'emergency services' means the police, fire and ambulance services: reg 2(1). As to the meaning of references to an appropriate containment level see PARA 600 note 9.

The competent authority may accept a single notification submitted under reg 10(1), 11(1) or 12(1) in respect of a connected programme of work undertaken by the same person at one site or more than one site: reg 13(2). The competent authority may accept a single notification submitted under reg 10(1), 11(1) or 12(1) in respect of a single activity involving genetic modification undertaken by the same person at more than one site: reg 13(3). For these purposes, 'connected programme of work' means a series of activities involving genetic modification which form a coherent and integrated programme; and 'site' means premises of which the competent authority has been notified in accordance with reg 9(1): reg 13(4).

12 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(2).

13 As to the meaning of 'emergency plan' see note 11.

14 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(3).

15 Ie sent in accordance with the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(2).

16 Ie required by the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(2).

17 As to classes 3 and 4 see PARA 600 note 9.

18 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(4)(a).

19 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(4)(b).

20 Ie in accordance with the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(1).

21 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(5).

22 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(6).

23 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(1)(a). The specified information is that specified in Sch 6 Pt II. A notification required for the purposes of reg 11(1) must contain the following information: (1) the name, address and telephone number and any fax number and any email address of the notifier; (2) the centre number allocated by the competent authority in respect of the premises at which the activity involving genetic modification of micro-organisms is to be undertaken and the date of the notification required by reg 9(1) relating to those premises; (3) the name of the employee of the notifier with specific responsibility for supervision and safety; (4) information on the training and qualifications of that employee; (5) the recipient or parental micro-organism to be used; (6) the donor micro-organism to be used; (7) where applicable, the host-vector system to be used; (8) the source and intended function of the genetic material involved in the modification; (9) the identity and characteristics of the genetically modified micro-organism; (10) the culture volumes to be used; (11) a description of the containment and other protective measures to be applied, including (a) information on waste management, including the type and form of wastes to be generated, their treatment, ultimate form and destination; (b) in the case of activities involving genetic modification of micro-organisms in class 3, justification for not applying any containment measure at containment level 3; and (c) in the case of activities involving genetic modification of micro-organisms in class 4, justification for not applying any containment measure at containment level 4; (12) the purpose of the activity involving genetic modification of micro-organisms, including its expected results; (13) a description of the parts of the installation; (14) information on any accident prevention and emergency plans, including (a) any specific hazards arising from the location of the installation; (b) the preventive measures applied, including safety equipment, alarm systems and containment methods; (c) procedures and plans for verifying the continuing effectiveness of the containment measures; (d) a description of the information provided to workers; (e) the information necessary for the competent authority to evaluate any emergency plan; and (f) confirmation that the emergency services and any body or authority liable to be affected by an accident to which any emergency plan relates will be informed of the contents of the plan and of any relevant revisions made in pursuance of reg 20(3); (15) a copy of the assessment referred to in reg 6(1); and (16) whether the genetically modified organism is likely to be subject to transboundary movement: Sch 6 Pt II para 2 (amended by SI 2005/2466). 'Transboundary movement' has the meaning assigned to it in European Parliament and EC Council Regulation 1946/2003 (OJ L 287, 5.11.2003, p 1) on transboundary movements of genetically modified organisms, art 3: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1) (definition added by SI 2005/2466).

24 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(1)(b).

25 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(2).

26 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(3).

27 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(4).

28 Ie under either the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(3) or reg 11(4).

29 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(5).

30 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(6).

31 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(7).

32 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(1). The specified information is that specified in Sch 6 Pt III. A notification required for the purposes of reg 12(1) must contain the following information: (1) the name, address and telephone number and any fax number and any email address of the notifier; (2) the centre number allocated by the competent authority in respect of the premises at which the activity involving genetic modification of organisms other than micro-organisms is to be undertaken and the date of the notification required by reg 9(1) relating to those premises; (3) the name of the employee of the notifier with specific responsibility for supervision and safety; (4) information on the training and qualifications of that employee; (5) the recipient or parental organism to be used; (6) the donor organism to be used; (7) where applicable, the host-vector system to be used; (8) the sources and intended functions of the genetic material involved in the modification; (9) the identity and characteristics of the genetically modified organism; (10) the purpose of the activity involving genetic modification of organisms other than micro-organisms, including its expected results; (11) a description of the containment and other protective measures to be applied, including information on waste management, including the type and form of wastes to be generated, their treatment, ultimate form and destination; (12) a copy of the assessment referred to in reg 7(1); (13) the information necessary for the competent authority to evaluate any emergency plan; and (14) confirmation that the emergency services and any body or authority liable to be affected by an accident to which any emergency

plan relates will be informed of the contents of that plan and of any relevant revisions made in pursuance of reg 20(3): Sch 3 Pt III para 3.

33 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(2).

34 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(3).

35 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(4).

36 le under the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11: see the text and notes 23-31.

37 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(1).

38 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(2). The specified matters are: (1) any change in the information specified in Sch 5 para (a), (d) or (e) and provided by him in accordance with reg 9(1); (2) any new building (a) added by the notifier to the premises notified by him in accordance with reg 9(1); and (b) under his control; (3) any decision by him no longer to use premises notified by him in accordance with reg 9(1) for the purposes of undertaking any activity involving genetic modification; (4) any cessation for the time being of all activity involving genetic modification at premises notified by him in accordance with reg 9(1); (5) any cessation of an activity involving genetic modification notified by him in accordance with reg 10(1), 11(1) or 12(1); (6) any recommencement by him of an activity involving genetic modification at premises in respect of which details of a cessation had previously been given by him under head (4) above; (7) any use by him of additional premises in connection with a single activity involving genetic modification carried on solely by him at more than one site, provided that a notification has been submitted by him in accordance with reg 9(1) in respect of the additional premises; (8) any change in the information specified in (a) in Sch 5 paras (b) and (c) and provided by him in accordance with reg 9(1); or (b) Sch 6 Pt I para 1(c) or (d) and provided by him in accordance with reg 10(1): reg 15(2)(a)-(h). Without prejudice to reg 11 and subject to reg 15(5), where a notifier subsequently (i) makes a change in the premises or the activity involving genetic modification to which his notification relates which may have significant consequences for the risks arising from that activity; or (ii) becomes aware of any new information which may have significant consequences for the risks arising from that activity, he must forthwith send to the competent authority in writing full details of the change or the new information, as the case may be: reg 15(3) (amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11 does not apply where a person undertakes an activity involving genetic modification with the written consent of the competent authority granted pursuant to reg 11(1)(b) and, but for reg 15(5), the change referred to in reg 15(3) would require that person to make a further notification under reg 11(1): reg 15(5) (amended by SI 2005/2466). For these purposes, the word 'site' has the same meaning as it has in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 13 (see note 11): reg 15(7).

39 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(6).

40 le subject to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24A: reg 24(1) (reg 24(1) substituted, reg 24(2), (3) amended, and reg 24(11) and reg 24A added, by SI 2002/63). No information must be included in the register if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24A(1) (as so added). For the purpose of securing the exclusion from the register of information to which reg 24A(1) applies, the Secretary of State may give to the competent authority directions (1) specifying information, or descriptions of information, to be excluded from the register; or (2) specifying descriptions of information to be referred to the Secretary of State for his determination: reg 24A(2) (as so added). No information referred to the Secretary of State pursuant to head (2) above may be included in the register until the Secretary of State determines that it should be so included: reg 24A(3) (as so added). The competent authority must notify the Secretary of State of any information it excludes from the register in accordance with directions given to it under heads (1)-(2) above: reg 24A(4) (as so added). A person may give a written notice to the Secretary of State (a) specifying information which appears to that person to be information to which reg 24A(1) may apply; and (b) indicating its apparent nature: reg 24A(5) (as so added). If a person gives a written notice pursuant to reg 24A(5), at the same time he must give written notice to the competent authority that he has done so: reg 24A(6) (as so added). No information notified pursuant to reg 24A(5) may be included in the register until the Secretary of State has determined that it shall be so included: reg 24A(7) (as so added). For these purposes, 'register' means the register maintained by the competent authority in accordance with reg 24(2): reg 24A(8) (as so added).

41 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24(2) (as amended: see note 40). The register must contain (1) in relation to every notification submitted under regs 9-12, (a) the name, address and telephone number and any fax number and any email address of the notifier; (b) the date on which the receipt of the notification was acknowledged by the Executive; and (c) if the competent authority receives details of a matter referred to in reg 15(2)(a)-(g) or in reg 15(3) (see note 38), confirmation that such

details have been received; (2) in relation to each notification submitted under reg 10(1), 11(1) or 12(1), the date of any cessation of the activity involving genetic modification to which the notification relates: reg 24(2) (a), (b). The register must also contain (i) in relation to each notification submitted under reg 9(1): (A) the information specified in Sch 5 paras (d)-(g), (h)(ii) and (h)(iii) (see note 35); and (B) if the competent authority has been informed of an accident under reg 21 at the premises to which the notification relates, confirmation that the information has been received; (ii) in relation to each notification submitted under reg 10(1), the information specified in Sch 6 Pt I para 1(e)-(l) (see note 11); (iii) in relation to each notification submitted under reg 11(1): (A) the information specified in Sch 6 Pt II para 2(e)-(m) (see note 23) and (B) if appropriate, confirmation that a consent under reg 11(3) or reg 11(4), as the case may be, has been granted; (iv) in relation to each notification submitted under reg 12(1), the information specified in Sch 6 Pt III para 3(e)-(k) (see note 32), but the register must not contain any information which the competent authority has decided is to be kept confidential under the Environmental Information Regulations 2004, SI 2004/3391, or the Environmental Information (Scotland) Regulations 2004, SSI 2004/520: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24(3) (as so amended; further amended by SI 2005/2466). Information must be entered in the register within 14 days of its receipt by the competent authority: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24(4) (substituted by SI 2005/2466).

The competent authority may remove from the register (aa) information relating to an activity involving genetic modification ten years after being notified in accordance with the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(2)(d)-(e) that the activity has ceased; and (bb) information relating to premises ten years after being notified in accordance with reg 15(2)(c) of a decision no longer to use such premises for the purposes of undertaking any activity involving genetic modification: reg 24(6).

Copies of the register as regards Great Britain must be maintained at the offices of the Executive at Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS: reg 24(7) (substituted by SI 2009/693). Copies of that part of the register maintained in accordance with this regulation by the competent authority as regards Scotland and the joint competent authority must be maintained at the offices of the Executive at Belford House, 59, Belford Road, Edinburgh EH4 3UE: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24(8). The copies of the register must be open to inspection by members of the public at any reasonable time: reg 24(10). For these purposes, 'register' means the register maintained by the competent authority in accordance with reg 24(2): reg 24(11) (as added: see note 40).



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### **603. Conduct of activities involving genetic modification.**

A person who carries out an assessment<sup>1</sup> must establish a genetic modification<sup>2</sup> safety committee to advise him in relation to that assessment<sup>3</sup>.

A person who undertakes an activity involving genetic modification<sup>4</sup> must ensure that:

- 947 (1) the exposure of humans and the environment to genetically modified micro-organisms<sup>5</sup> is reduced to the lowest level that is reasonably practicable<sup>6</sup>; and
- 948 (2) harm to humans arising from an activity involving genetic modification of organisms<sup>7</sup> other than micro-organisms is reduced to the lowest level that is reasonably practicable<sup>8</sup>.

For any activity involving genetic modification of micro-organisms, the measures to be taken in order to comply with the duty under heads (1) and (2) above include the general principles<sup>9</sup> of good microbiological practice and of good occupational safety and hygiene<sup>10</sup>. For any activity involving genetic modification of organisms other than micro-organisms, those general principles must be applied in so far as they are appropriate<sup>11</sup>.

Subject to the following provision, a person who undertakes an activity involving genetic modification of micro-organisms must apply the applicable containment measures<sup>12</sup>, where and to the extent required<sup>13</sup>. Where, however, a risk assessment<sup>14</sup>, or any review of that assessment<sup>15</sup>, shows that a particular containment measure of the appropriate containment level is not necessary or practicable for the activity involving genetic modification of micro-organisms to which the assessment relates, the person undertaking that activity, after providing full justification to, and with the written agreement of, the competent authority<sup>16</sup>, need not apply that containment measure for the activity in question<sup>17</sup>.

A person who undertakes an activity involving genetic modification of micro-organisms must review the containment measures so applied by him at suitably regular intervals<sup>18</sup> and forthwith if that person suspects that:

- 949 (a) the containment measures are no longer adequate;
- 950 (b) the class in relation to the activity involving genetic modification of micro-organisms<sup>19</sup> identified in the risk assessment is no longer appropriate; or
- 951 (c) in the light of new scientific or technical knowledge, the risk assessment is no longer valid<sup>20</sup>.

A person who undertakes an activity involving genetic modification of organisms other than micro-organisms must apply the containment measures selected in accordance with the assessment made pursuant to the statutory requirement<sup>21</sup>. That person must review the containment measures applied by him in accordance with this provision at suitably regular intervals<sup>22</sup> and forthwith if that person suspects that the containment measures applied are no longer adequate, or, in the light of new scientific or technical knowledge, the above-mentioned assessment is no longer valid<sup>23</sup>.

Where an assessment of the risk of activities involving genetically modified micro-organisms carried out pursuant to the statutory requirement<sup>24</sup> shows that, as a result of any reasonably

foreseeable accident<sup>25</sup>, the health or safety of persons outside the premises<sup>26</sup> in which an activity involving genetic modification is carried on is liable to be seriously affected or there is a risk of serious damage to the environment, the person undertaking that activity must ensure that, before the activity to which the assessment relates begins, a suitable plan is prepared with a view to securing the health and safety of those persons and the protection of the environment<sup>27</sup>. Similarly, where an assessment of the risk of activities involving genetically modified organisms other than micro-organisms carried out pursuant to the statutory requirement<sup>28</sup> shows that, as a result of any reasonably foreseeable accident, the health or safety of persons outside the premises in which an activity involving genetic modification is undertaken is liable to be seriously affected, the person undertaking that activity must ensure that, before the activity to which the assessment relates begins, a suitable plan is prepared with a view to securing the health and safety of those persons<sup>29</sup>. Every emergency plan must include the measures to be taken in the event of an accident to which the plan relates and must be reviewed and, where necessary, revised at suitably regular intervals<sup>30</sup>. The person undertaking the activity involving genetic modification which is the subject of an emergency plan must:

- 952 (i) inform the emergency services<sup>31</sup> and any body or authority liable to be affected by an accident to which the plan relates of the contents of the plan and of any relevant revisions made<sup>32</sup>; and
- 953 (ii) make the plan and any such revisions publicly available<sup>33</sup>.

Where an accident occurs, the person undertaking the activity involving genetic modification must forthwith inform the competent authority of the accident and must provide the following information:

- 954 (A) the circumstances of the accident;
- 955 (B) the identity and quantity of the genetically modified organisms concerned;
- 956 (C) any information necessary to assess the effects of the accident on the health of the general population and on the environment; and
- 957 (D) any measures taken in response to the accident<sup>34</sup>.

Where the competent authority is informed of an accident in pursuance of the above provision, it must ensure that any necessary measures are taken<sup>35</sup>. It must immediately inform those EEA states<sup>36</sup> which could be affected by the accident<sup>37</sup> and must collect, where possible, the information necessary for a full analysis of the accident and, where appropriate, make recommendations to avoid similar accidents in the future and to limit their effects<sup>38</sup>. The competent authority must send to the European Commission the information provided under heads (A), (B) and (D) above, information on the effectiveness of the measures taken in response to the accident and an analysis of the accident, including recommendations to limit its effects and to avoid similar accidents in the future<sup>39</sup>.

1     I.e. pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6 or reg 7: see PARA 601.

2     As to the meaning of 'genetic modification' see PARA 600 note 2.

3     Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 16.

4     As to the meaning of 'activity involving genetic modification' see PARA 600.

5     As to the meaning of 'micro-organism' see PARA 600 note 3.

6     As to what is reasonably practicable see PARA 417.

7     As to the meaning of 'organism' see PARA 600 note 3.

- 8 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(1).
- 9 Ie the general principles set out in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 7. Schedule 7 is not set out detail in this work.
- 10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(2).
- 11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(3).
- 12 Ie the containment measures set out in the applicable Table in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 8: reg 18(1). Schedule 8 is not set out in detail in this work.
- 13 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(1). The extent required is that required in the column of the appropriate containment level: reg 18(1). For the construction of references to an appropriate containment level see PARA 600 note 9.
- 14 For these purposes, 'risk assessment' means an assessment carried out pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6: reg 18(4).
- 15 Ie any review carried out in accordance with the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 8: see PARA 601.
- 16 As to the meaning of 'competent authority' see PARA 600 note 8.
- 17 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(2) (amended by SI 2005/2466).
- 18 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(a).
- 19 As to the meaning of 'class' see PARA 600 note 9.
- 20 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(b).
- 21 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 19(1). The assessment referred to in the text is that made pursuant to reg 7(1): see PARA 601.
- 22 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 19(2)(a).
- 23 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 19(2)(b).
- 24 Ie carried out pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6(1).
- 25 As to the meaning of 'accident' see PARA 602 note 4.
- 26 As to the meaning of 'premises' see PARA 302 note 6.
- 27 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(1).
- 28 Ie pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 7(1).
- 29 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(2).
- 30 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(3). As to the meaning of 'emergency plan' see PARA 602 note 11.
- 31 As to the meaning of 'emergency services' see PARA 602 note 11.
- 32 Ie made in pursuance of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(3).
- 33 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(4).
- 34 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(1).

- 35 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(a).
- 36 As to the meaning of 'EEA state' see PARA 600 note 4.
- 37 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(b).
- 38 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(c).
- 39 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(d).

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#### **604. Enforcement and civil liability; appeals.**

A failure to discharge a duty placed on the competent authority<sup>1</sup> or the Health and Safety Executive<sup>2</sup> by the Genetically Modified Organisms (Contained Use) Regulations 2000<sup>3</sup> or placed on any other person by the provisions of those regulations regarding appeals<sup>4</sup> is not an offence<sup>5</sup>. Subject to that, and to the extent they would not otherwise do so, the provisions of the Health and Safety at Work etc Act 1974 relating to approved codes of practice and enforcement<sup>6</sup>, offences<sup>7</sup> and civil liability<sup>8</sup> and the provisions of the Health and Safety (Training for Employment) Regulations 1990<sup>9</sup> apply to those regulations as if they were health and safety regulations for the purposes of the 1974 Act<sup>10</sup>.

The enforcing authority for the 2000 regulations is the Executive<sup>11</sup>.

Any person who is aggrieved by a decision of the competent authority:

- 958 (1) that he may not undertake a specified activity involving genetic modification<sup>12</sup>;
- 959 (2) not to agree<sup>13</sup> that he need not apply a particular containment measure for the activity involving genetic modification in question;
- 960 (3) to revoke an exemption certificate granted to him<sup>14</sup>;
- 961 (4) to grant to him an exemption certificate subject to a condition or a limit of time<sup>15</sup>,

may appeal to the appropriate person<sup>16</sup>.

Where an appeal is brought under the above provisions, none of the following, that is to say:

- 962 (a) a decision of the competent authority;
- 963 (b) an instruction given concerning the cessation of an activity<sup>17</sup>;
- 964 (c) the operation of specified provisions<sup>18</sup>;
- 965 (d) a specified notice given by the competent authority<sup>19</sup>,

is to be suspended pending the final determination of the appeal<sup>20</sup>.

The appropriate person must direct that an appeal is to be determined by a person appointed by him for the purpose and the appropriate person must notify the parties in writing of the name of the appointed person<sup>21</sup>. Before the determination of an appeal, the appointed person must ask the parties whether they wish to appear and be heard on the appeal<sup>22</sup>. The appeal may be determined without a hearing of the parties if both of them express a wish not to be heard<sup>23</sup>. If either of the parties expresses a wish to appear and be heard, the appointed person must afford both of them an opportunity of so doing, in which case the prescribed procedure<sup>24</sup> applies<sup>25</sup>.

An appointed person may give such directions as he thinks appropriate to give effect to his determination<sup>26</sup>.

1 As to the meaning of 'competent authority' see PARA 600 note 8.

2 As to the Health and Safety Executive see PARA 361 et seq.

3 Ie by the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831: see PARA 600 et seq.

4 Ie by the provisions of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 29(4), Sch 11: see the text and notes 21-26.

5 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(2). The Health and Safety at Work etc Act 1974 s 33(1)(c) (see PARA 852) has effect accordingly: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(2).

6 Ie the Health and Safety at Work etc Act 1974 ss 16-26: see PARA 372 et seq.

7 Ie the Health and Safety at Work etc Act 1974 ss 33-42: see PARA 852 et seq.

8 Ie the Health and Safety at Work etc Act 1974 s 47: see PARAS 420, 446.

9 Ie the Health and Safety (Training for Employment) Regulations 1990, SI 1990/1380: see PARA 302 note 1.

10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(1). A function of the Health and Safety Executive under any other provision of the Health and Safety at Work etc Act 1974 under or in respect of health and safety regulations, including their enforcement, is exercisable as if the 2000 regulations were, to the extent they would not otherwise be so, health and safety regulations for the purposes of that Act: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(1) (amended by SI 2008/960). As to the Health and Safety Executive see PARA 361 et seq. A failure to discharge a duty placed on the competent authority or the Executive by the 2000 regulations, or placed on any other person by Sch 11 (see note 32), is not an offence; and the Health and Safety at Work etc Act 1974 s 33(1)(c) (see PARAS 852-853) has effect accordingly: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(2).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(3). This is so notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 (see PARAS 370, 372): Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 26(3).

12 Ie an activity referred to in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(1), reg 11(1) or reg 12(1): see PARA 602. As to the meaning of 'activity involving genetic modification' see PARA 600.

13 Ie pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(2): see PARA 603.

14 Ie granted to him pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25(1): see PARA 600.

15 Ie pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25(1): see PARA 600.

16 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 29(1). For these purposes, 'appropriate person' means (1) the Secretary of State, in the case of (a) an appeal under reg 29(1), (2)(c) or (3) against a decision of, or a notice given by, the competent authority as regards England and Wales; or (b) an appeal under reg 29(2)(a) or (b) against a request or instruction relating to the undertaking or proposed undertaking of an activity involving genetic modification, or premises which are the subject of a notification under reg 9(1) and which are situate, in England or Wales; (2) the Secretary of State and the Scottish Ministers, acting jointly, in the case of (a) an appeal under reg 29(1), (2)(c) or (3) against a decision of, or a notice given by, the competent authority as regards Scotland or the joint competent authority; or (b) an appeal under reg 29(2)(a) or (b) against a request or instruction relating to the undertaking or proposed undertaking of an activity involving genetic modification in premises situate, or premises which are the subject of a notification under reg 9(1) and are situate, wholly in Scotland or on the border between England and Scotland, as the case may be: reg 29(8) (amended by SI 2005/2466). As to the meaning of 'joint competent authority' see PARA 602 note 4.

17 Ie given pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(3): see PARA 602.

18 Ie the operation of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(2) or (6): see PARA 602.

19 le pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(1): see PARA 602.

20 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 29(5).

21 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 para 2. The appropriate person may pay to an appointed person such remuneration and allowances as the appropriate person may, with the approval of the Minister for the Civil Service, determine: Sch 11 para 5.

22 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 para 3.

23 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 para 3(a).

24 le the provisions of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 Pt II (paras 6-14): see note 32.

25 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 para 3(b). The procedure set out in Sch 11 Pt II is as follows. Subject to the following provisions, a date, time and place for the holding of the hearing must be fixed, and may be varied, by the appointed person, who must give not less than 42 days' notice in writing of such date, time and place to the parties: Sch 11 para 7(1). With the consent of the parties, the appointed person may give such lesser period of notice as is agreed with the parties and in that event he may specify a date for service of the statement referred to in Sch 11 para 8(1) later than the date determined in accordance with Sch 11 para 8: Sch 11 para 7(2). Where it becomes necessary or advisable to vary the time or place fixed for the hearing, the appointed person must give such notice of the variation as may appear to him to be reasonable in the circumstances: Sch 11 para 7(3). Without prejudice to Sch 11 para 7(1)-(3), the appointed person may require the authority to take one or more of the following steps, ie: (1) to publish in one or more newspapers circulating in the locality in which the site is situated such notice of the hearing and in such form as he may direct; (2) to serve such notice of the hearing, in such form and on such persons or classes of persons as he may direct; (3) to give such other notice of the hearing and in such form as he may direct, and the requirements as to the period of notice contained in Sch 11 para 7(1) are not to apply to any such notices: Sch 11 para 7(4).

Not later than 28 days before the date of the hearing, or such later date as the appointed person may specify in accordance with Sch 11 para 7(2), the authority must serve on the appellant a written statement of any submission which the authority proposes to put forward at the hearing and must supply a copy of the statement to the appointed person: Sch 11 para 8(1). Where a government department has expressed in writing to the authority a view in support of the decision of the authority and the authority proposes to rely on such expression of view in its submission at the hearing, the authority must include the expression of view in its statement and must supply a copy of the statement to the government department concerned: Sch 11 para 8(2). Where the authority intends to refer to or put in evidence at the hearing, documents (including photographs, maps and plans), the statement of the authority must be accompanied by a list of such documents, together with a written notice stating the times and place at which the documents may be inspected by the appellant; and the authority must afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of the documents: Sch 11 para 8(3). If so required by the appointed person, the appellant must (a) serve on the authority and on the appointed person, within such time before the hearing as the appointed person may specify, a written statement of the submissions which he proposes to put forward at the hearing; and such statement must be accompanied by a list of any documents (including photographs, maps and plans) which the appellant intends to refer to or put in evidence at the hearing; and (b) afford the authority a reasonable opportunity to inspect and, where practicable, to take copies of such documents as are referred to in the foregoing provision: Sch 11 para 8(4).

The parties are entitled to appear at the hearing: Sch 11 para 9(1). Any other person may appear at the discretion of the appointed person provided that he has, not later than seven days before the date of the hearing, served on the authority a statement of his proposed submissions: Sch 11 para 9(2). The authority must send a copy of every statement served on it in accordance with Sch 11 para 9(2) to the appointed person and to the appellant: Sch 11 para 9(3). A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or a solicitor or any other person: Sch 11 para 9(4) (amended by SI 2005/2466). A person may appear on his own behalf or be represented by counsel, a solicitor or any other person: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 11 para 9(5). Where a government department has expressed in writing to the authority a view in support of the decision of the authority and the authority has included this view in the statement referred to in Sch 11 para 8(1), the appellant may apply in writing to the appointed person, not later than 14 days before the date of the hearing, for a representative of the government department concerned to be made available at the hearing: Sch 11 para 10(1). The appointed person must send any application so made to him to the government department concerned who must make a representative of the department available to attend the hearing: Sch 11 para 10(2). A representative of a government department who, in pursuance of this provision, attends a hearing must be called as a witness by the authority and must state the reasons for the view expressed by his department and included in the statement of the authority under Sch 11 para 8(1) and must give evidence and be subject to cross-examination to the same extent as any other witness (Sch 11 para 10(3)) but nothing in this

provision requires a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy or to matters which affect the safety of the state and the appointed person must disallow any such question (Sch 11 para 10(4)).

Except as otherwise provided in Sch 11 Pt II, the procedure at the hearing is to be such as the appointed person in his discretion determines and the appointed person must (i) state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, he proposes to adopt; and (ii) inform the parties what he proposes as regards any site inspection arising out of the hearing: Sch 11 para 11(1). Unless in any particular case the appointed person with the consent of the appellant otherwise determines, in the case of an appeal to the Secretary of State, the appellant must be heard first and must have the right of final reply: Sch 11 para 11(2)(a). In the case of an appeal to the Secretary of State and the Scottish Ministers acting jointly, the appellant must be heard first, the other persons entitled or permitted to appear must be heard in such order as the appointed person may determine, and any closing statements must be made in the same order, unless the appointed person otherwise determines: Sch 11 para 11(2)(b). The parties are entitled to make an opening statement, to call evidence and to cross-examine persons giving evidence, but any other person appearing at the hearing may do so only to the extent permitted by the appointed person: Sch 11 para 11(3). Subject to the following provision, any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded him to take or obtain copies thereof (Sch 11 para 11(4)); but the appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest (Sch 11 para 11(5)). The appointed person may allow the authority or the appellant, or both of them, to alter or add to the submissions contained in any statement served under Sch 11 para 8(1) or (4), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but must (if necessary by adjourning the hearing) give the appellant or the authority, as the case may be, an adequate opportunity of considering any such fresh submission or document: Sch 11 para 11(6). If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing at his discretion: Sch 11 para 11(7). The appointed person is entitled (subject to disclosure thereof at the hearing) to take into account any written representations or statements received by him before the hearing from any person: Sch 11 para 11(8). The appointed person may from time to time adjourn the hearing, and where he does so, must give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing: Sch 11 para 11(9).

The appointed person may make an inspection of the site before or during the hearing after having given notice to the parties of the date and time at which he proposes to do so: Sch 11 para 12(1). The appointed person may, and must if so requested by either party before or during the hearing, inspect the site after the close of the hearing and, in all cases where he intends to make such an inspection, must announce during the hearing the date and time at which he proposes to do so: Sch 11 para 12(2). The parties are entitled to accompany the appointed person on any such inspection, but the appointed person is not bound to defer his inspection if any person entitled to accompany him is not present at the time appointed: Sch 11 para 12(3).

Where, after the close of the hearing, the appointed person proposes to take into consideration any new evidence, including expert opinion on a matter of fact, or any new issue of fact, not being a matter of government policy or a matter affecting the safety of the state, which was not raised at the hearing and which he considers to be material to his decision, he must not come to a decision without first notifying the parties of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within that time for the re-opening of the hearing: Sch 11 para 13(1). If he thinks fit, the appointed person may cause the hearing to be re-opened and must cause it to be re-opened if asked to do so in accordance with the above provision: Sch 11 para 13(2). Where the hearing is re-opened, Sch 11 para 7(1), (4) applies as it applied to the original hearing with the substitution in Sch 11 para 7(1) of '28' for '42': Sch 11 para 13(3).

The appointed person must notify the decision on the appeal, and the reasons therefor, in writing to the parties and to any person who, having appeared at the hearing, has asked to be notified of the decision: Sch 11 para 14.

For the purposes of Sch 11, 'appeal' means an appeal under reg 29; 'appellant' means a person who has brought an appeal; 'appointed person' means a person appointed in accordance with Sch 11 para 2; 'appropriate person' has the same meaning as in reg 29; 'authority' means the competent authority in the case of an appeal under reg 29(1), (2)(c) and the Executive in the case of an appeal under reg 29(2)(a) or (b); 'hearing' means a hearing to which Sch 11 Pt II applies; 'parties' means the appellant and the authority; and 'site' means premises at which the activity involving genetic modification to which the appeal relates is, or is proposed to be, undertaken: Sch 11 para 1.



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## **(2) PROTECTION FROM GENERAL RISKS**

### **(i) Electricity**

#### **605. Duties imposed by the Electricity at Work Regulations 1989.**

Except where otherwise expressly provided, it is the duty of every employer and self-employed person<sup>1</sup> to comply with the provisions of the Electricity at Work Regulations 1989<sup>2</sup> in so far as they relate to matters which are within his control<sup>3</sup>. It is also the duty of every manager, in relation to a mine<sup>4</sup>, and operator, in relation to a quarry<sup>5</sup>, to ensure that all requirements or prohibitions imposed by or under those regulations are complied with in so far as they relate to the mine of which he is the manager or quarry of which he is the operator and to matters which are within his control<sup>6</sup>.

It is the duty of every employee<sup>7</sup> while at work to co-operate with his employer so far as is necessary to enable any duty placed on that employer by the provisions of those regulations to be complied with and to comply with the provisions of those regulations in so far as they relate to matters which are within his control<sup>8</sup>.

Exemptions from the regulations may be granted by the Health and Safety Executive by a certificate in writing<sup>9</sup>.

The regulations do not apply to the master or crew of a sea-going ship, or to the employer of such persons, in relation to the normal ship-board activities of a ship's crew under the direction of the master, nor to any person in relation to an aircraft or hovercraft which is moving under its own power<sup>10</sup>.

The 1989 regulations apply both in and, in certain circumstances, outside<sup>11</sup> Great Britain<sup>12</sup>.

General regulations<sup>13</sup> apply to all work; and specific provisions to mines only<sup>14</sup>.

1 As to the meaning of 'self-employed person' see PARA 302 note 5.

2 I.e. the Electricity at Work Regulations 1989, SI 1989/635 (see the text and notes 3-13; and PARA 606 et seq), which came into force on 1 April 1990: reg 1.

3 Electricity at Work Regulations 1989, SI 1989/635, reg 3(1)(a).

4 I.e. within the meaning of the Mines and Quarries Act 1954: see PARA 343 note 1.

5 I.e. within the meaning of the Quarries Regulations 1999, SI 1999/2024: see PARA 838.

6 Electricity at Work Regulations 1989, SI 1989/635, reg 3(1)(b) (substituted by SI 1999/2024).

7 As to the meaning of 'employee' see PARA 302 note 4.

8 Electricity at Work Regulations 1989, SI 1989/635, reg 3(2).

9 See the Electricity at Work Regulations 1989, SI 1989/635, reg 30. Subject to reg 30(2), the Health and Safety Executive may, by a certificate in writing, exempt (1) any person; (2) any premises; (3) any electrical equipment; (4) any electrical system; (5) any electrical process; (6) any activity, or any class of the above, from any requirement or prohibition imposed by the 1989 regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 30(1).

The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to (a) the conditions, if any, which it proposes to attach to the exemption; and (b) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 30(2). As to the Health and Safety Executive see PARA 361 et seq. For these purposes, 'electrical equipment' includes anything used, intended to be used or installed for use, to generate, provide, transmit, transform, rectify, convert, conduct, distribute, control, store, measure or use electrical energy; and 'system' means an electrical system in which all the electrical equipment is, or may be, electrically connected to a common source of electrical energy, and includes such source and such equipment: reg 2(1).

10 Electricity at Work Regulations 1989, SI 1989/635, reg 32.

11 The 1989 regulations apply outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Electricity at Work Regulations 1989, SI 1989/635, reg 31(b) (reg 31 substituted by SI 1997/1993); Interpretation Act 1978 s 17(2).

12 Electricity at Work Regulations 1989, SI 1989/635, reg 31 (as substituted: see note 11). As to the meaning of 'Great Britain' see PARA 305 note 7.

13 Ie the Electricity at Work Regulations 1989, SI 1989/635, Pt II (regs 4-16): see PARA 606 et seq.

14 Ie the Electricity at Work Regulations 1989, SI 1989/635, Pt III (regs 17-28): see PARAS 799-800, 805.

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#### **606. Systems, work activities, protective equipment, strength and capability.**

All systems<sup>1</sup> must at all times be of such construction as to prevent, so far as is reasonably practicable<sup>2</sup>, danger<sup>3</sup>, and all systems must be maintained, so far as is reasonably practicable, to prevent danger<sup>4</sup>.

Every work activity, including operation, use and maintenance of a system and work near a system, must be carried out in such a manner as not to give rise, so far as is reasonably practicable, to danger<sup>5</sup>.

Any equipment provided under the relevant regulations<sup>6</sup> for the purpose of protecting persons at work on or near electrical equipment must be suitable for the use for which it is provided, be maintained in a condition suitable for that use, and be properly used<sup>7</sup>.

No electrical equipment<sup>8</sup> may be put into use where its strength and capability may be exceeded in such a way as may give rise to danger<sup>9</sup>.

In any proceedings for an offence consisting of a contravention of certain of these provisions<sup>10</sup> it is a defence for any person to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of that offence<sup>11</sup>.

1 As to the meaning of 'system' see PARA 605 note 9.

2 As to the meaning of 'reasonably practicable' see PARA 417.

3 Electricity at Work Regulations 1989, SI 1989/635, reg 4(1). For these purposes, 'danger' means risk of injury; and 'injury' means death or personal injury from electric shock, electric burn, electrical explosion or arcing, or from fire or explosion initiated by electrical energy, where any such death or injury is associated with the generation, provision, transmission, transformation, rectification, conversion, conduction, distribution, control, storage, measurement or use of electrical energy: reg 2(1).

4 Electricity at Work Regulations 1989, SI 1989/635, reg 4(2).

5 Electricity at Work Regulations 1989, SI 1989/635, reg 4(3).

6 I.e. the Electricity at Work Regulations 1989, SI 1989/635: see PARAS 605, 607-608, 799-800, 805.

7 Electricity at Work Regulations 1989, SI 1989/635, reg 4(4).

8 As to the meaning of 'electrical equipment' see PARA 605 note 9.

9 Electricity at Work Regulations 1989, SI 1989/635, reg 5.

10 I.e. the Electricity at Work Regulations 1989, SI 1989/635, regs 4(4), 5.

11 Electricity at Work Regulations 1989, SI 1989/635, reg 29. As to offences generally see PARA 852 et seq.

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**607. Environments, insulations, conductors, connections and isolators.**

Electrical equipment<sup>1</sup> which may reasonably foreseeably be exposed to:

- 966 (1) mechanical damage;
- 967 (2) the effects of the weather, natural hazards, temperature or pressure;
- 968 (3) the effects of wet, dirty, dusty or corrosive conditions; or
- 969 (4) any flammable or explosive substance, including dusts, vapours or gases,

must be of such construction or, as necessary, protected so far as to prevent, so far as is reasonably practicable<sup>2</sup>, danger<sup>3</sup> arising from such exposure<sup>4</sup>.

All conductors<sup>5</sup> in a system<sup>6</sup> which may give rise to danger must either be suitably covered with insulating material and as necessary protected so as to prevent, so far as is reasonably practicable, danger; or have such precautions taken in respect of them<sup>7</sup> as will prevent, so far as is reasonably practicable, danger<sup>8</sup>.

Precautions must be taken, either by earthing or by other suitable means, to prevent danger arising when any conductor (other than a circuit conductor<sup>9</sup>) which may reasonably foreseeably become charged as a result of either the use of a system, or a fault in a system, becomes so charged; and, for the purposes of ensuring compliance with this regulation, a conductor is to be regarded as earthed when it is connected to the general mass of earth by conductors of sufficient strength and sufficient current-carrying capability to discharge electrical energy to earth<sup>10</sup>.

If a circuit conductor is connected to earth, or to any other reference point, nothing which might reasonably be expected to give rise to danger by breaking the electrical continuity or introducing high impedance must be placed in that conductor unless suitable precautions are taken to prevent that danger<sup>11</sup>.

Where necessary to prevent danger, every joint and connection in a system must be mechanically and electrically suitable for use<sup>12</sup>.

Efficient means, suitably located, must be provided for protecting from excess of current every part of a system as may be necessary to prevent danger<sup>13</sup>.

Where necessary to prevent danger, suitable means<sup>14</sup> must be available for cutting off the supply of electrical energy to any electrical equipment and for the isolation<sup>15</sup> of any electrical equipment. This requirement does not apply to electrical equipment which is itself a source of electrical energy but, in such a case as is necessary, precautions must be taken to prevent, so far as is reasonably practicable, danger<sup>16</sup>.

Adequate precautions must be taken to prevent electrical equipment which has been made dead in order to prevent danger while work is carried out on or near that equipment, from becoming electrically charged during that work if danger may thereby arise<sup>17</sup>.

No person may be engaged in any work activity on or so near any live conductor (other than one suitably covered with insulating material so as to prevent danger) that danger may arise, unless:

- 970 (a) it is unreasonable in all the circumstances for it to be dead; and
- 971 (b) it is reasonable in all the circumstances for him to be at work on or near it while it is live; and
- 972 (c) suitable precautions<sup>18</sup> are taken to prevent injury<sup>19</sup>.

In any proceedings for an offence consisting of a contravention of certain of these provisions<sup>20</sup> it is a defence for any person to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of that offence<sup>21</sup>.

- 1 As to the meaning of 'electrical equipment' see PARA 605 note 9.
- 2 As to what is 'reasonably practicable' see PARA 417.
- 3 As to the meaning of 'danger' see PARA 606 note 3.
- 4 Electricity at Work Regulations 1989, SI 1989/635, reg 6. As to the application of the 1989 regulations see PARA 605.
- 5 'Conductor' means a conductor of electrical energy: Electricity at Work Regulations 1989, SI 1989/635, reg 2(1).
- 6 As to the meaning of 'system' see PARA 605 note 9.
- 7 This includes their being suitably placed: Electricity at Work Regulations 1989, SI 1989/635, reg 7(b).
- 8 Electricity at Work Regulations 1989, SI 1989/635, reg 7.
- 9 'Circuit conductor' means any conductor in a system which is intended to carry electric current in normal conditions, or to be energised in normal conditions, and includes a combined neutral and earth conductor, but does not include a conductor provided solely to perform a positive function by connection to earth or other reference point: Electricity at Work Regulations 1989, SI 1989/635, reg 2(1).
- 10 Electricity at Work Regulations 1989, SI 1989/635, reg 8.
- 11 Electricity at Work Regulations 1989, SI 1989/635, reg 9.
- 12 Electricity at Work Regulations 1989, SI 1989/635, reg 10.
- 13 Electricity at Work Regulations 1989, SI 1989/635, reg 11.
- 14 I.e. including, where appropriate, means of identifying circuits: Electricity at Work Regulations 1989, SI 1989/635, reg 12(1).
- 15 'Isolation' in this context means the disconnection and separation of the electrical equipment from every source of electrical energy in such a way that this disconnection and separation is secure: Electricity at Work Regulations 1989, SI 1989/635, reg 12(2).
- 16 Electricity at Work Regulations 1989, SI 1989/635, reg 12(3).
- 17 Electricity at Work Regulations 1989, SI 1989/635, reg 13.
- 18 Including where necessary the provision of suitable protective equipment: Electricity at Work Regulations 1989, SI 1989/635, reg 14(c).
- 19 Electricity at Work Regulations 1989, SI 1989/635, reg 14.
- 20 I.e. the Electricity at Work Regulations 1989, SI 1989/635, regs 8-14.
- 21 Electricity at Work Regulations 1989, SI 1989/635, reg 29.

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**608. Working space, access, lighting and supervision.**

For the purposes of enabling injury<sup>1</sup> to be prevented, adequate working space, adequate means of access and adequate lighting must be provided at all electrical equipment<sup>2</sup> on or near which work is being done in circumstances which may give rise to danger<sup>3</sup>.

No person may be engaged in any work activity where technical knowledge or experience is necessary to prevent danger or, where appropriate, injury, unless he possesses such knowledge or experience, or is under such degree of supervision as may be appropriate having regard to the nature of the work<sup>4</sup>.

In any proceedings for an offence consisting of a contravention of certain of these provisions<sup>5</sup> it is a defence for any person to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of that offence<sup>6</sup>.

1 As to the meaning of 'injury' see PARA 606 note 3.

2 As to the meaning of 'electrical equipment' see PARA 605 note 9.

3 Electricity at Work Regulations 1989, SI 1989/635, reg 15. As to the meaning of 'danger' see PARA 606 note 3. As to the application of the 1989 regulations see PARA 605.

4 Electricity at Work Regulations 1989, SI 1989/635, reg 16.

5 I.e. the Electricity at Work Regulations 1989, SI 1989/635, regs 15, 16.

6 Electricity at Work Regulations 1989, SI 1989/635, reg 29.

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## (ii) Gas

### 609. Duties of employers etc.

Where an employer or a self-employed person requires any work in relation to a gas fitting<sup>1</sup> to be carried out at any place of work under his control or where an employer or self-employed person has control to any extent of work in relation to a gas fitting, he must take reasonable steps to ensure that the person undertaking that work is, or is employed by, a member of a class of persons approved<sup>2</sup> by the Health and Safety Executive<sup>3</sup>.

It is the duty of every employer or self-employed person to ensure that any gas appliance<sup>4</sup>, installation pipework or flue installed at any place of work under his control is maintained in a safe condition so as to prevent risk of injury to any person<sup>5</sup>.

If the responsible person<sup>6</sup> for any premises knows or has reason to suspect that gas is escaping into those premises, he must immediately take all reasonable steps to cause the supply of gas to be shut off at such place as may be necessary to prevent further escape of gas<sup>7</sup>. If gas continues to escape into those premises after the supply of gas has been shut off or when a smell of gas persists, the responsible person for the premises discovering such escape or smell must immediately give notice of the escape or smell to the supplier of the gas<sup>8</sup>. Where an escape of gas has been stopped by shutting off the supply, no person may cause or permit the supply to be re-opened, other than in the course of repair, until all necessary steps have been taken to prevent a recurrence of such escape<sup>9</sup>.

Gas safety is discussed more fully elsewhere in this work<sup>10</sup>.

1 'Gas fittings' means gas pipework, valves (other than emergency controls), regulators and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, cooking or other purposes for which gas can be used (other than the purpose of an industrial process carried out on industrial premises), but it does not mean (1) any part of a service pipe; (2) any part of a distribution main or other pipe upstream of the service pipe; (3) a gas storage vessel; or (4) a gas cylinder or cartridge designed to be disposed of when empty: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1). 'Work' in relation to a gas fitting includes any of the following activities carried out by any person, whether an employee or not, ie: (a) installing or re-connecting the fitting; (b) maintaining, servicing, permanently adjusting, disconnecting, repairing, altering or renewing the fitting or purging it of air or gas; (c) where the fitting is not readily movable, changing its position; and (d) removing the fitting; but the expression does not include the connection or disconnection of a bayonet fitting or other self-sealing connector: reg 2(1).

2 Ie approved under the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(3): see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 913-914. Note that the Gas Safe Register has replaced the CORGI gas register for gas engineers.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 4. As to the Health and Safety Executive see PARA 361 et seq.

4 'Gas appliance' means an appliance designed for use by a consumer of gas for heating, lighting, cooking or other purposes for which gas can be used but it does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1).

5 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 35.

6 'Responsible person', in relation to any premises, means the occupier of the premises or, where there is no occupier or the occupier is away, the owner of the premises or any person with authority for the time being to take appropriate action in relation to any gas fitting therein: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1).

7 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(2). 'Gas' means any substance which is or (if it were in a gaseous state) would be gas within the meaning of the Gas Act 1986 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 802) except that it does not include gas consisting wholly or mainly of hydrogen when used in non-domestic premises: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1). For these purposes, any reference to an escape of gas from a gas fitting includes a reference to an escape or emission of carbon monoxide gas resulting from incomplete combustion of gas in a gas fitting: reg 37(8).

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(3).

9 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(4).

10 See **FUEL AND ENERGY**.



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### **(iii) Water Cooling Towers and Evaporative Condensers**

#### **610. Requirement to notify water cooling towers etc.**

Subject to certain exceptions<sup>1</sup>, it is the duty of each person who has, to any extent, control of premises<sup>2</sup> to ensure that no notifiable device is situated on those premises unless the prescribed information<sup>3</sup> has been notified in writing, on a form approved for the time being for these purposes by the Health and Safety Executive<sup>4</sup>, to the local authority<sup>5</sup> in whose area the premises are situated<sup>6</sup>. For these purposes, a 'notifiable device' means a cooling tower<sup>7</sup> or an evaporative condenser<sup>8</sup> except (1) where it contains no water that is exposed to air; and (2) where its water supply is not connected; and (3) where its electrical supply is not connected<sup>9</sup>.

Where the premises are to any extent under the control of the manufacturer of the device, it is, however, sufficient compliance with the above requirement if the local authority in whose area the premises are situated is notified of the address of the premises and the name and telephone number of a person who has, to any extent, control of those premises<sup>10</sup>.

Where a notification has been made in accordance with either of these provisions and subsequently a change occurs which affects the particulars notified, a person upon whom the relevant duty is imposed must ensure that the change is notified in writing to the local authority concerned within one month after its occurrence<sup>11</sup>; and where a notification has been made in accordance with any of the above provisions and subsequently the device ceases to be, and is no longer intended to remain, a notifiable device, a person upon whom the relevant duty is imposed must as soon as is reasonably practicable<sup>12</sup> after the cessation ensure that the fact is notified in writing to the local authority concerned<sup>13</sup>. The latter requirement does not, however, apply in any case where the operation of a notifiable device is suspended for the purposes of maintenance or by reason of seasonal shutdown<sup>14</sup>.

Use of this type of equipment is subject to an approved code of practice relating to the control of legionella bacteria in water<sup>15</sup>. Guidance on legionnaires disease has also been issued by the Health and Safety Executive<sup>16</sup>. Legionellosis is a reportable occupational disease<sup>17</sup> and faulty maintenance of an air-conditioning system so as to expose the public to a risk of infection by legionnaires disease is a breach of the general duty<sup>18</sup> owed to persons other than employees under the Health and Safety at Work etc Act 1974<sup>19</sup>. The risks posed by legionella bacteria must be taken into account in the general risk assessment under the Management of Health and Safety at Work Regulations 1999<sup>20</sup> and may require an additional risk assessment under the Control of Substances Hazardous to Health Regulations 2002<sup>21</sup>.

1    le subject to the Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3 (see the text and notes 2-14) and to reg 4 (transitional provisions): reg 3(1).

2    For these purposes, 'premises' means all non-domestic premises used for or in connection with the carrying on of a trade, business or other undertaking (whether for profit or not): Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 2.

3    le the information set out in the Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, Schedule. The prescribed information is: (1) the address of the premises where the notifiable device is to be situated; (2) the name, address and telephone number of a person who has, to any extent, control of the premises referred to in head (1) above; (3) the number of notifiable devices at those

premises; and (4) the location on the premises of each notifiable device referred to in head (3) above: Schedule paras 1-4.

4 As to the Health and Safety Executive see PARA 361 et seq.

5 'Local authority' means (1) in relation to England, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, or the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly; and (2) in relation to Wales, a county council or a county borough council: Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 2 (definition amended by virtue of the Local Government (Wales) Act 1994 ss 22(3), 66(8), Sch 13 para 93(3), Sch 18).

6 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3(1).

7 'Cooling tower' means a device whose main purpose is to cool water by direct contact between that water and a stream of air: Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 2.

8 'Evaporative condenser' means a device whose main purpose is to cool a fluid by passing that fluid through a heat exchanger which is itself cooled by contact with water passing through a stream of air; and 'heat exchanger' means a device for transferring heat between fluids which are not in direct contact with one another: Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 2.

9 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 2.

10 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3(2).

11 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3(3).

12 As to when is as soon as reasonably practicable see PARA 417.

13 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3(4).

14 Notification of Cooling Towers and Evaporative Condensers Regulations 1992, SI 1992/2225, reg 3(5).

15 See the Approved Code of Practice on Legionnaires Disease: The control of legionella bacteria in water systems (ACOP L8). As to codes of practice approved by the Health and Safety Executive see PARA 426.

16 See *Legionnaires Disease: A Guide for Employers* (HSE Books). As to the status of such guidance see PARA 371.

17 See PARA 406.

18 Ie under the Health and Safety at Work etc Act 1974 s 3: see PARA 422.

19 *R v Board of Trustees of the Science Museum* [1993] 3 All ER 853, [1993] 1 WLR 1171, CA.

20 See the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3; and PARA 429.

21 Biological agents such as legionella bacteria are included in the definition of 'substance hazardous to health' under the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARA 620 note 3. As to risk assessment for the purposes of those regulations see PARA 621.

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#### **(iv) Noise**

##### **611. Scope of regulations.**

The Control of Noise at Work Regulations 2005<sup>1</sup> have effect with a view to protecting persons against risk to their health and safety arising from exposure to noise<sup>2</sup> at work<sup>3</sup>. The 2005 regulations apply with one exception<sup>4</sup> to a self-employed person<sup>5</sup> as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee<sup>6</sup>. Where a duty is placed on an employer in respect of his employees, the employer is, so far as is reasonably practicable, under a like duty in respect of any other person at work who may be affected by the work carried out by the employer except that the duties of the employer in relation to health surveillance<sup>7</sup> do not extend to persons who are not his employees, and the duties of the employer in relation to information, instruction and training<sup>8</sup> do not extend to persons who are not his employees, unless those persons are present at the workplace where the work is being carried out<sup>9</sup>.

The 2005 regulations do not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master<sup>10</sup>. Subject to that, those regulations apply both in and, in certain circumstances, outside<sup>11</sup> Great Britain<sup>12</sup>.

The Secretary of State for Defence may, by a certificate in writing, exempt any person or class of persons from certain provisions of the regulations<sup>13</sup> in respect of activities carried out in the interests of national security which conflict with the requirements of any of those provisions, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>14</sup>. The Secretary of State must not grant such an exemption, however, unless he is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of the 2005 regulations<sup>15</sup>.

Exemption from certain requirements<sup>16</sup> of the regulations may be granted to any person or class of persons by the Health and Safety Executive by a certificate in writing where because of the nature of the work the full and proper use of personal hearing protectors would be likely to cause greater risk to health or safety than not using such protectors<sup>17</sup>. The Executive may also, by a certificate in writing, exempt any person or class of persons from certain provisions of the regulations<sup>18</sup> in respect of activities carried out by emergency services<sup>19</sup> which conflict with the requirements of any of those provisions<sup>20</sup>. The Executive must not grant such an exemption, however, unless it is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of the 2005 regulations<sup>21</sup>.

<sup>1</sup> See the Control of Noise at Work Regulations 2005, SI 2005/1643: see the text and notes 2-21; and PARAS 612-618. The 2005 regulations implement European Parliament and EC Council Directive 2003/10 (OJ L42, 15.2.2003, p 38) on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) and came into force on 6 April 2006, except that for the music and entertainment sectors only they came into force on 6 April 2008; and, subject to the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(4) (see the text and note 10), reg 6(4) does not come into force in relation to the master and crew of a seagoing ship until 6 April 2011: reg 1. 'Music and entertainment sectors' means all workplaces where (1) live music is played; or (2) recorded music is played in a restaurant, bar, public house, discotheque or nightclub, or alongside live music or a live dramatic or dance performance: reg 2(1). Guidance about exposure to noise may be found on the Health and Safety Executive's internet site (accessible

at the date at which this title states the law at [www.hse.gov.uk](http://www.hse.gov.uk)). As to the Health and Safety Executive see PARA 361 et seq.

2 'Noise' means any audible sound: Control of Noise at Work Regulations 2005, SI 2005/1643, reg 2(1). In those regulations, a reference to an employee being exposed to noise is a reference to the exposure of that employee to noise which arises while he is at work, or arises out of or in connection with his work: reg 2(2).

3 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(1).

4 Ie the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9 (see para 617) does not apply to a self-employed person.

5 As to the meaning of 'self-employed person' see para 302 note 5.

6 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(3).

7 Ie under the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9. 'Health surveillance' means assessment of the state of health of an employee, as related to exposure to noise: reg 2(1).

8 Ie under the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 10: see para 618.

9 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(2).

10 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(4). For these purposes 'ship' includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy: reg 3(4).

11 Ie the Control of Noise at Work Regulations 2005, SI 2005/1643, apply to and in relation to any activity outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see para 305) as those provisions apply within Great Britain. As to the meaning of 'Great Britain' see para 305 note 7.

12 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 14.

13 Ie the provisions of the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6(4), 7(1)-(3). See paras 613-615.

14 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 13(1).

15 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 13(2).

16 Ie the provisions of the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6(4), 7(1), (2). See paras 613-614.

17 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 11(1). Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 11(1). The Executive must not grant such an exemption unless (1) it consults the employers and the employees or their representatives concerned; (2) it consults such other persons as it considers appropriate; (3) the resulting risks are reduced to as low a level as is reasonably practicable; and (4) the employees concerned are subject to increased health surveillance: reg 11(2).

18 Ie the provisions of the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6(4), 7(1)-(3).

19 'Emergency services' includes (1) police, fire, rescue and ambulance services; (2) Her Majesty's Coastguard: Control of Noise at Work Regulations 2005, SI 2005/1643, reg 2(1).

20 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 12(1). Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 12(1).

21 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 12(2).

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## **612. Assessment of risk to health and safety from exposure to noise.**

An employer or other person responsible<sup>1</sup> who carries out work which is liable to expose any employees to noise<sup>2</sup> at or above a lower exposure action value<sup>3</sup> must make a suitable and sufficient assessment of the risk from that noise to the health and safety of those employees, and the risk assessment<sup>4</sup> must identify the measures which need to be taken to meet the requirements of the Control of Noise at Work Regulations 2005<sup>5</sup>. In conducting the risk assessment, the employer must assess the levels of noise to which workers are exposed by means of (1) observation of specific working practices; (2) reference to relevant information on the probable levels of noise corresponding to any equipment used in the particular working conditions; and (3) if necessary, measurement of the level of noise to which his employees are likely to be exposed, and the employer must assess whether any employees are likely to be exposed to noise at or above a lower exposure action value, an upper exposure action value<sup>6</sup>, or an exposure limit value<sup>7</sup>.

The risk assessment must include consideration of:

- 973 (a) the level, type and duration of exposure, including any exposure to peak sound pressure;
- 974 (b) the effects of exposure to noise on employees or groups of employees whose health is at particular risk from such exposure;
- 975 (c) so far as is practicable, any effects on the health and safety of employees resulting from the interaction between noise and the use of ototoxic substances at work, or between noise and vibration;
- 976 (d) any indirect effects on the health and safety of employees resulting from the interaction between noise and audible warning signals or other sounds that need to be audible in order to reduce risk at work;
- 977 (e) any information provided by the manufacturers of work equipment;
- 978 (f) the availability of alternative equipment designed to reduce the emission of noise;
- 979 (g) any extension of exposure to noise at the workplace beyond normal working hours, including exposure in rest facilities supervised by the employer;
- 980 (h) appropriate information obtained following health surveillance, including, where possible, published information; and
- 981 (i) the availability of personal hearing protectors with adequate attenuation characteristics<sup>8</sup>.

The risk assessment must be reviewed regularly, and forthwith if there is reason to suspect that the risk assessment is no longer valid or there has been a significant change in the work to which the assessment relates, and where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>9</sup>.

The employees concerned or their representatives must be consulted on the assessment of risk under these provisions<sup>10</sup>.

The employer must record the significant findings of the risk assessment as soon as is practicable after the risk assessment is made or changed and the measures which he has taken and which he intends to take to meet the specified<sup>11</sup> requirements as to the elimination or

control of exposure to noise at the workplace, the provision of hearing protection and the provision of information, instruction and training<sup>12</sup>.

1 In this paragraph and in PARAS 613-618 the expression 'person responsible' is used in order to convey the effect of these provisions in place of the expression 'employer' used in the regulations, which includes, where appropriate, a reference to a self-employed person: see the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 3(3); and PARA 611. As to the meaning of 'self-employed person' see PARA 302 note 5.

2 As to the meanings of 'noise' and 'expose' see PARA 611 note 2.

3 'Lower exposure action value' means the lower of the two levels of daily or weekly personal noise exposure or of peak sound pressure set out in the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 4 which, if reached or exceeded, require specified action to be taken to reduce risk: reg 2(1). 'Daily personal noise exposure' means the level of daily personal noise exposure of an employee as ascertained in accordance with Sch 1 Pt 1, taking account of the level of noise and the duration of exposure and covering all noise; 'weekly personal noise exposure' means the level of weekly personal noise exposure as ascertained in accordance with Sch 1 Pt 2, taking account of the level of noise and the duration of exposure and covering all noise; and 'peak sound pressure' means the maximum sound pressure to which an employee is exposed, ascertained in accordance with Sch 2: reg 2(1). The lower exposure action values are (1) a daily or weekly personal noise exposure of 80 dB (A-weighted); and (2) a peak sound pressure of 135 dB (C-weighted): reg 4(1). Regulation 4 also specifies the upper exposure action values as (a) a daily or weekly personal noise exposure of 85 dB (A-weighted); and (b) a peak sound pressure of 137 dB (C-weighted) (reg 4(2)) and the exposure limit values as (i) a daily or weekly personal noise exposure of 87 dB (A-weighted); and (ii) a peak sound pressure of 140 dB (C-weighted) (reg 4(3)). Where the exposure of an employee to noise varies markedly from day to day, an employer may use weekly personal noise exposure in place of daily personal noise exposure for the purpose of compliance with the 2005 regulations: reg 4(4). In applying the exposure limit values in reg 4(3), but not in applying the lower and upper exposure action values in reg 4(1) and (2), account must be taken of the protection given to the employee by any personal hearing protectors provided by the employer in accordance with reg 7(2) (see PARA 614): reg 4(5).

4 'Risk assessment' means the assessment of risk required by the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5: reg 2(1).

5 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(1).

6 'Upper exposure action value' means the higher of the two levels of daily or weekly personal noise exposure or of peak sound pressure set out in the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 4 which, if reached or exceeded, require specified action to be taken to reduce risk: reg 2(1).

7 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(2). 'Exposure limit value' means the level of daily or weekly personal noise exposure or of peak sound pressure set out in reg 4 which must not be exceeded: reg 2(1).

8 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(3).

9 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(4).

10 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(5).

11 Ie the requirements of the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6, 7 and 10: see PARAS 613-615, 618.

12 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 5(6).

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### **613. Elimination or control of exposure to noise.**

Every person responsible<sup>1</sup> must ensure that risk from the exposure of his employees to noise<sup>2</sup> is either eliminated at source or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable<sup>3</sup>.

If any employee is likely to be exposed to noise at or above an upper exposure action value<sup>4</sup>, the person responsible must reduce exposure to as low a level as is reasonably practicable by establishing and implementing a programme of organisational and technical measures, excluding the provision of personal hearing protectors, which is appropriate to the activity<sup>5</sup>.

The person responsible must ensure that his employees are not exposed to noise above an exposure limit value<sup>6</sup>; or, if an exposure limit value is exceeded must forthwith (1) reduce exposure to noise to below the exposure limit value; (2) identify the reason for that exposure limit value being exceeded; and (3) modify the organisational and technical measures taken in accordance with the specified requirements<sup>7</sup> to prevent it being exceeded again<sup>8</sup>.

Where rest facilities are made available to employees, the person responsible must ensure that exposure to noise in these facilities is reduced to a level suitable for their purpose and conditions of use<sup>9</sup>. The person responsible must adapt any measure taken in compliance with the above requirements to take account of any employee or group of employees whose health is likely to be particularly at risk from exposure to noise<sup>10</sup>. The employees concerned or their representatives must be consulted on the measures to be taken to meet those requirements<sup>11</sup>.

1 As to the meaning of 'person responsible' see PARA 612 note 1.

2 As to the meanings of 'expose' and 'noise' see PARA 611 note 2.

3 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(1). As to the application of, and exemptions from, the 2005 regulations see PARA 611; and as to the meaning of 'reasonably practicable' see PARA 417.

4 As to the meaning of 'upper exposure action value' see PARA 612 note 6.

<sup>5</sup> Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(2). As to the provision of personal hearing protectors see PARA 614.

The actions taken by the person responsible in compliance with reg 6(1), (2) must be based on the general principles of prevention set out in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, Sch 1 (see PARA 433) and must include consideration of the following (Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(3)):

212 (1) other working methods which reduce exposure to noise;

213 (2) choice of appropriate work equipment emitting the least possible noise, taking account of the work to be done;

214 (3) the design and layout of workplaces, work stations and rest facilities;

215 (4) suitable and sufficient information and training for employees, such that work equipment may be used correctly, in order to minimise their exposure to noise;

216 (5) reduction of noise by technical means;

217 (6) appropriate maintenance programmes for work equipment, the workplace and workplace systems;

218 (7) limitation of the duration and intensity of exposure to noise; and

219 (8) appropriate work schedules with adequate rest periods.

6 As to the meaning of 'exposure limit value' see PARA 596 note 6.

7 le in accordance with the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6(1), (2), 7 and 8(1).

8 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(4). As to exemption from these requirements see PARA 611. It has been held that an employer may be liable for hearing loss caused by noise levels below the statutory limits: see *Baker v Quantum Clothing Group* [2009] EWCA Civ 499, [2009] All ER (D) 205 (May).

9 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(5).

10 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(6).

11 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6(7).



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#### **614. Ear protection.**

Without prejudice to the general requirement to eliminate or control exposure to noise in the workplace<sup>1</sup>, a person responsible<sup>2</sup> who carries out work which is likely to expose any employees to noise<sup>3</sup> at or above a lower exposure action value<sup>4</sup> must make personal hearing protectors available upon request to any employee who is so exposed<sup>5</sup>; and if a person responsible is unable by other means to reduce the levels of noise to which an employee is likely to be exposed to below an upper exposure action value<sup>6</sup>, he must provide personal hearing protectors to any employee who is so exposed<sup>7</sup>.

Any personal hearing protectors made available or provided under the above provisions must be selected by the person responsible (1) so as to eliminate the risk to hearing or to reduce the risk to as low a level as is reasonably practicable; and (2) after consultation with the employees concerned or their representatives<sup>8</sup>.

1    le the provisions of the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6: see PARA 613.

2    As to the meaning of 'person responsible' see PARA 612 note 1.

3    As to the meanings of 'expose' and 'noise' see PARA 611 note 2.

4    As to the meaning of 'lower exposure action value' see PARA 612 note 3.

5    Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7(1). As to the application of, and exemptions from, the 2005 regulations see PARA 611. As to exemption from the requirements of reg 7(1) see PARA 611. See also eg *Harris v BRB (Residuary) Ltd* [2005] EWCA Civ 900, [2005] ICR 1680; *Baker v Quantum Clothing Group* [2009] EWCA Civ 499, [2009] All ER (D) 205 (May). Cf *Bux v Slough Metals Ltd* [1974] 1 All ER 262, [1973] 1 WLR 1358, CA (eye protection).

6    As to the meaning of 'upper exposure action value' see PARA 612 note 6.

7    Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7(2). As to exemption from this requirement see PARA 611.

8    Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7(4). Any such personal hearing protectors must also comply with any requirement of the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARA 567) which is applicable to them: Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7(4) (amended by SI 2009/693). As to the meaning of 'reasonably practicable' see PARA 417.

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**615. Hearing protection zones.**

If in any area of the workplace under the control of the person responsible<sup>1</sup> an employee is likely to be exposed to noise<sup>2</sup> at or above an upper exposure action value<sup>3</sup> for any reason, the person responsible must ensure that:

- 982 (1) the area is designated a hearing protection zone;
- 983 (2) the area is demarcated and identified by means of the specified sign<sup>4</sup>; and
- 984 (3) access to the area is restricted where this is practicable and the risk from exposure justifies it,

and must ensure so far as is reasonably practicable that no employee enters that area unless that employee is wearing personal hearing protectors<sup>5</sup>.

1 As to the meaning of 'person responsible' see PARA 612 note 1.

2 As to the meanings of 'expose' and 'noise' see PARA 611 note 2.

3 As to the meaning of 'upper exposure action value' see PARA 612 note 6.

4 I.e. the sign specified for the purpose of indicating that ear protection must be worn in the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pt II para 3.3: see PARA 445.

5 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7(3). As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417. As to the application of, and exemptions from, the 2005 regulations see PARA 611.

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## **616. Maintenance and use of equipment.**

The person responsible<sup>1</sup> must (1) ensure so far as is practicable<sup>2</sup> that anything provided by him in compliance with his duties in respect of noise at work<sup>3</sup> to or for the benefit of an employee, other than personal hearing protectors<sup>4</sup>, is fully and properly used; and (2) ensure that anything provided by him in compliance with such duties is maintained in an efficient state, in efficient working order and in good repair<sup>5</sup>.

Every employee must (a) make full and proper use of personal hearing protectors provided to him by the person responsible and of any other control measures provided by the person responsible in compliance with his duties in respect of noise at work; and (b) if he discovers any defect in any personal hearing protectors or other control measures as specified in head (a) above report it to the person responsible as soon as is practicable<sup>6</sup>.

1 As to the meaning of 'person responsible' see PARA 612 note 1.

2 As to the meaning of 'practicable' see PARA 417.

3 I.e. his duties under the Control of Noise at Work Regulations 2005, SI 2005/1643: see PARAS 612-615. As to the application of and exemptions from these regulations see PARA 611.

4 I.e. personal hearing protectors provided under the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7: see PARA 614.

5 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 8(1).

6 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 8(2).

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## 617. Health surveillance.

If the risk assessment<sup>1</sup> indicates that there is a risk to the health of his employees who are, or are liable to be, exposed to noise<sup>2</sup>, the employer<sup>3</sup> must ensure that such employees are placed under suitable health surveillance<sup>4</sup>, which must include testing of their hearing<sup>5</sup>. The employer must ensure that a health record in respect of each of his employees who undergoes health surveillance in accordance with the above provision is made and maintained and that the record or a copy thereof is kept available in a suitable form<sup>6</sup>.

The employer must, on reasonable notice being given, allow an employee access to his personal health record and provide the enforcing authority<sup>7</sup> with copies of such health records as it may require<sup>8</sup>.

Where, as a result of health surveillance, an employee is found to have identifiable hearing damage the employer must ensure that the employee is examined by a doctor and, if the doctor or any specialist to whom the doctor considers it necessary to refer the employee considers that the damage is likely to be the result of exposure to noise, the employer must (1) ensure that a suitably qualified person informs the employee accordingly; (2) review the risk assessment; (3) review any measure taken to comply with his duties to reduce exposure to noise<sup>9</sup>, taking into account any advice given by a doctor or occupational health professional, or by the enforcing authority; (4) consider assigning the employee to alternative work where there is no risk from further exposure to noise, taking into account any advice given by a doctor or occupational health professional; and (5) ensure continued health surveillance and provide for a review of the health of any other employee who has been similarly exposed<sup>10</sup>.

An employee to whom these provisions apply must, when required by his employer and at the cost of his employer, present himself during his working hours for such health surveillance procedures as may be required<sup>11</sup>.

1 As to the meaning of 'risk assessment' see PARA 612 note 4.

2 As to the meanings of 'expose' and 'noise' see PARA 611 note 2.

3 The Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9 does not apply to a self-employed person: reg 3(3). As to the meaning of 'self-employed person' see PARA 302 note 5.

4 As to the meaning of 'health surveillance' see PARA 611 note 7.

5 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9(1). As to the application of, and exemptions from, the 2005 regulations see PARA 611.

6 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9(2).

7 'Enforcing authority' means the Health and Safety Executive, local authority or Office of Rail Regulation, determined in accordance with the provisions of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (see PARAS 370, 372; **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195): Control of Noise at Work Regulations 2005, SI 2005/1643, reg 2(1).

8 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9(3).

9 ie under the Control of Noise at Work Regulations 2005, SI 2005/1643, regs 6-8: see PARAS 613-616.

- 10 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9(4).
- 11 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9(5).

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### **618. Provision of information.**

Where employees are exposed to noise<sup>1</sup> which is likely to be at or above a lower exposure action value<sup>2</sup>, the person responsible<sup>3</sup> must provide those employees and their representatives with suitable and sufficient information, instruction and training<sup>4</sup>.

Without prejudice to the generality of the above requirement, the information, instruction and training provided must include:

- 985 (1) the nature of risks from exposure to noise;
- 986 (2) the organisational and technical measures taken in order to comply with the requirements as to the elimination or control of exposure to noise<sup>5</sup>;
- 987 (3) the exposure limit values<sup>6</sup> and upper and lower exposure action values<sup>7</sup>;
- 988 (4) the significant findings of the risk assessment<sup>8</sup>, including any measurements taken, with an explanation of those findings;
- 989 (5) the availability and provision of personal hearing protectors<sup>9</sup> and their correct use<sup>10</sup>;
- 990 (6) why and how to detect and report signs of hearing damage;
- 991 (7) the entitlement to health surveillance<sup>11</sup> and its purposes;
- 992 (8) safe working practices to minimise exposure to noise; and
- 993 (9) the collective results of any health surveillance undertaken in a form calculated to prevent those results from being identified as relating to a particular person<sup>12</sup>.

The information, instruction and training required must be updated to take account of significant changes in the type of work carried out or the working methods used by the employer<sup>13</sup>. The employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties as to noise at work<sup>14</sup> has suitable and sufficient information, instruction and training<sup>15</sup>.

1 As to the meanings of 'expose' and 'noise' see PARA 611 note 2.

2 As to the meaning of 'lower exposure action value' see PARA 612 note 3.

3 As to the meaning of 'person responsible' see PARA 612 note 1.

4 Control of Noise at Work Regulations 2005, SI 2005/1643, reg 10(1). As to the application of, and exemptions from, the 2005 regulations see PARA 611. See *Harris v BRB (Residuary) Ltd* [2005] EWCA Civ 900, [2005] ICR 1680 (on the Noise at Work Regulations 1989, SI 1989/1790, reg 11 (revoked)).

5 Ie the requirements of the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 6: see PARA 613.

6 As to the meaning of 'exposure limit value' see PARA 612 note 7.

7 As to the meaning of 'upper exposure action value' see PARA 612 note 6.

8 As to the meaning of 'risk assessment' see PARA 612 note 4.

9 Ie under the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 7: see PARA 614.

10     le in accordance with the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 8(2): see PARA 616.

11     le under the Control of Noise at Work Regulations 2005, SI 2005/1643, reg 9: see PARA 617. As to the meaning of 'health surveillance' see PARA 611 note 7.

12     Control of Noise at Work Regulations 2005, SI 2005/1643, reg 10(2).

13     Control of Noise at Work Regulations 2005, SI 2005/1643, reg 10(3).

14     le under the Control of Noise at Work Regulations 2005, SI 2005/1643.

15     Control of Noise at Work Regulations 2005, SI 2005/1643, reg 10(4); and cf *Bux v Slough Metals Ltd* [1974] 1 All ER 262, [1973] 1 WLR 1358, CA. As to information relating to noise to be provided in connection with the supply of machinery etc see the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597; and PARA 533 et seq. As to equipment for use outdoors see the Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001, SI 2001/1701; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 53.

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## **(v) Hazardous and Dangerous Substances etc**

### **A. CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH**

#### **619. General control of substances hazardous to health.**

The manufacture and the use of certain substances<sup>1</sup> are prohibited for all purposes by the Control of Substances Hazardous to Health Regulations 2002<sup>2</sup> and the use or supply for use of certain other substances is prohibited in prescribed circumstances<sup>3</sup>.

The importation into the United Kingdom<sup>4</sup>, other than from another member state<sup>5</sup>, of matches made with white phosphorus is prohibited<sup>6</sup> and a person may not supply such a substance or article during the course of or for use at work<sup>7</sup>.

Subject to an exception in the case of an act or default of an employee or appointed health and safety assistant of that person<sup>8</sup>, in any proceedings for an offence consisting of a contravention of the relevant regulations<sup>9</sup> it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence<sup>10</sup>.

The 2002 regulations are supported by an approved code of practice<sup>11</sup>.

1 'Substance' means a natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, including micro-organisms: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1). As to the meaning of 'micro-organism' PARA 620 note 3.

2 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(1), Sch 2, Table item 1. The manufacture and the use for all purposes, including any manufacturing process in which such a substance is formed, of the following substances are prohibited: 2-naphthylamine; benzidine; 4-aminodiphenyl; 4-nitrodiphenyl; their salts and any substance containing any of those compounds, in a total concentration equal to or greater than 0.1 per cent by mass: Sch 2, Table item 1.

3 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 2, Table items 2-10. Those uses and substances are as follows:

- 220 (1) use, as an abrasive for blasting articles in any blasting apparatus, of sand or other substance containing free silica;
- 221 (2) use, as a parting material in connection with the making of metal castings, of a substance (a) containing compounds of silicon calculated as silica to the extent of more than 3% by weight of dry material, other than natural sand, zirconium silicate (zircon), calcined china clay, calcined aluminous fireclay, sillimanite, calcined or fused alumina, olivine; or (b) composed of or containing dust or other matter deposited from a fettling or blasting process;
- 222 (3) use, in the cold-cure process of vulcanising in the proofing of cloth with rubber, of carbon disulphide;
- 223 (4) use, for oiling the spindles of self-acting mules, of oils other than white oil, or oil of entirely animal or vegetable origin or entirely of mixed animal and vegetable origin;
- 224 (5) use, in relation to the manufacture or decoration of pottery for the following purposes, ie (a) the placing of ware for the biscuit fire; (b) the polishing of ware; (c) as the ingredient of a wash for saggars, trucks, bats, cranks, or other articles used in supporting ware during firing; and



- (d) as dusting or supporting powder in potters' shops, of ground or powdered flint or quartz other than natural sand;
- 225 (6) use, in relation to the manufacture or decoration of pottery for any purpose except (a) use in a separate room or building for (i) the manufacture of powdered flint or quartz; or (ii) the making of frits or glazes or the making of colours or coloured slips for the decoration of pottery; (b) use for the incorporation of the substance into the body of ware in an enclosure in which no person is employed and which is constructed and ventilated to prevent the escape of dust, of ground or powdered flint or quartz other than (i) natural sand; or (ii) ground or powdered flint or quartz, which forms parts of a slop or paste;
- 226 (7) use, for sprinkling the moulds of silica bricks, ie bricks or other articles composed of refractory material and containing not less than 80% of silica, of dust or powder of a refractory material containing not less than 80% of silica other than natural sand;
- 227 (8) use, in the manufacture of matches, of white phosphorus;
- 228 (9) use, in fumigation except when (a) released from an inert material in which hydrogen cyanide is absorbed; (b) generated from a gassing powder; or (c) applied from a cylinder through suitable piping and applicators other than for fumigation in the open air to control or kill mammal pests, of hydrogen cyanide.

For the purposes of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 2, 'aerosol dispenser' means an article which consists of a non-reusable receptacle containing a gas compressed, liquefied or dissolved under pressure, with or without liquid, paste or powder and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state; 'blasting apparatus' means apparatus for cleaning, smoothing, roughening or removing of part of the surface of any article by the use as an abrasive of a jet of sand, metal shot or grit or other material propelled by a blast of compressed air or steam or by a wheel; 'CAS No' is the number assigned to a substance by the Chemical Abstract Service; 'cosmetic product' has the meaning assigned to it in the Cosmetic Products (Safety) Regulations 2008, SI 2008/1284, reg 3(1) (ie any substance or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, correcting body odours, protecting them, or keeping them in good condition except where such cleaning, perfuming, protecting, changing, keeping or correcting is wholly for the purpose of treating or preventing disease (including any aerosol dispenser containing a cosmetic product)); 'gassing powder' means a chemical compound in powder form which reacts with atmospheric moisture to generate hydrogen cyanide; 'medicinal product' means a substance or preparation which is (A) intended for use as a medicinal product within the meaning of the Medicines Act 1968 s 130; or (B) a substance or preparation specified in an order made under s 104 or s 105 which is for the time being in force and which directs that specified provisions of that Act are to have effect in relation to that substance or preparation as such provisions have effect in relation to medicinal products within the meaning of that Act; 'use as a parting material' means the application of the material to the surface or parts of the surface of a pattern or of a mould so as to facilitate the separation of the pattern from the mould or the separation of parts of the mould; and 'white oil' means a refined mineral oil conforming to a specification approved for the time being in writing by the Health and Safety Executive and certified by its manufacturer as so conforming: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1), Sch 2; Interpretation Act 1978 s 17(2). As to the Health and Safety Executive see PARA 361 et seq.

4 As to the meaning of 'United Kingdom' see PARA 305 note 8.

5 For these purposes, 'member state' means a state which is a contracting party to the Agreement; and 'Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and adopted as respects Great Britain by the European Economic Area Act 1993: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1). As to the European Economic Area ('EEA') see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 386 note 1.

6 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(2) (amended by SI 2008/2852). A contravention of this provision is punishable under the Customs and Excise Management Act 1979 and not as a contravention of a health and safety regulation: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(2). See further **CUSTOMS AND EXCISE**.

7 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 4(3).

8 Ie subject to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21: see PARA 859.

9 Ie the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677.

10 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 21. As to offences generally see PARA 852 et seq.

11 See the Approved Code of Practice on the Control of Substances Hazardous to Health (ACoP L5). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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## **620. Application of regulations imposing duties on employers.**

The relevant regulations imposing duties on employers with regard to substances hazardous to health<sup>1</sup> have effect with a view to protecting persons against a risk<sup>2</sup> to their health, whether immediate or delayed, arising from exposure to substances hazardous to health<sup>3</sup> except:

- 994 (1) where and to the extent that specified regulations relating to respirable dust in coal mines<sup>4</sup>, the control of lead at work<sup>5</sup> and the control of asbestos at work<sup>6</sup> apply;
- 995 (2) where the substance is hazardous<sup>7</sup> to health solely by virtue of its radioactive, explosive or flammable properties, or solely because it is at a high or low temperature or a high pressure;
- 996 (3) where the risk to health is a risk to the health of a person to whom the substance is administered in the course of his medical treatment<sup>8</sup>.

Where a duty is placed by the Control of Substances Hazardous to Health Regulations 2002 on an employer in respect of his employees<sup>9</sup>, then subject to certain exceptions<sup>10</sup> he is, so far as is reasonably practicable<sup>11</sup>, under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried out by the employer<sup>12</sup>.

Subject to certain exceptions<sup>13</sup>, the 2002 regulations apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee<sup>14</sup>.

The regulations do not, however, apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master and are not liable to expose persons other than the master and crew to a risk to their health and safety<sup>15</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt:

- 997 (a) any of Her Majesty's Forces<sup>16</sup>;
- 998 (b) any visiting force<sup>17</sup>;
- 999 (c) members of a visiting force working in or attached to a headquarters<sup>18</sup>; or
- 1000 (d) any person engaged in work involving substances hazardous to health, if that person is under the direct supervision of a representative of the Secretary of State for Defence,

from all or any of the requirements or prohibitions imposed by the 2002 regulations<sup>19</sup>. Any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing, except that, where any such exemption is granted, suitable arrangements must be made for the assessment of the health risk created by the work involving substances hazardous to health and for adequately controlling the exposure to those substances of persons to whom the exemption relates<sup>20</sup>. Furthermore, the Health and Safety Executive<sup>21</sup> may, by a certificate in writing, exempt any person or class of persons or any

substance or class of substances from all or any of the requirements or prohibitions imposed by certain of those regulations<sup>22</sup>. The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case and, in particular, to:

- 1001 (i) the conditions, if any, which it proposes to attach to the exemption; and
- 1002 (ii) any requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>23</sup>.

1     I.e. the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, regs 6-13: see PARA 621 et seq.

2     'Risk', in relation to the exposure of an employee to a substance hazardous to health, means the likelihood that the potential for harm to the health of a person will be attained under the conditions of use and exposure and also the extent of that harm: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1).

3     'Substance hazardous to health' means a substance (including a preparation): (1) which is listed in the CLP Regulation Annex VI Pt 3 Table 3.2 and for which an indication of danger specified for the substance is very toxic, toxic, harmful, corrosive or irritant; (2) for which the Health and Safety Executive has approved a workplace exposure limit; (3) which is a biological agent; (4) which is dust of any kind, except dust which is a substance within head (1) or head (2) above, when present at a concentration in air equal to or greater than (a) 10 mg/m<sup>3</sup>, as a time-weighted average over an 8-hour period, of inhalable dust, or (b) 4 mg/m<sup>3</sup>, as a time-weighted average over an 8-hour period, of respirable dust; (5) which, not being a substance falling within heads (1)-(4) above, because of its chemical or toxicological properties and the way it is used or is present at the workplace creates a risk to health: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (amended by SI 2004/3386 and SI 2008/960). For these purposes, 'CLP Regulation' means European Parliament and EC Council Regulation 1272/2008 (OJ L 353, 31.12.2008, p 1) on classification, labelling and packaging of substances and mixtures amending and repealing EC Council Directive 67/548 (OJ P196, 16.08.1967, p 1) and EC Directive 1999/45 (OJ L 200, 30.7.1999, p 1), and amending European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3); 'approved' means approved for the time being in writing; 'workplace exposure limit' for a substance hazardous to health means the exposure limit approved by the Health and Safety Executive for that substance in relation to the specified reference period when calculated by a method approved by the Health and Safety Executive, as contained in HSE publication 'EH/40 Workplace Exposure Limits 2005' as updated from time to time; 'biological agent' means a micro-organism, cell culture, or human endoparasite, whether or not genetically modified, which may cause infection, allergy, toxicity or otherwise create a hazard to human health (and 'micro-organism' means a microbiological entity, cellular or non-cellular, which is capable of replication or of transferring genetic material; and 'cell culture' means the in-vitro growth of cells derived from multicellular organisms); 'inhalable dust' means airborne material which is capable of entering the nose and mouth during breathing, as defined by BS EN 481 1993; and 'respirable dust' means airborne material which is capable of penetrating to the gas exchange region of the lung, as defined by BS EN 481 1993: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (amended by SI 2004/3386; SI 2008/960; and SI 2009/716). As to the meaning of 'substance' see PARA 619 note 1.

For these purposes, a reference to an employee being exposed to a substance hazardous to health is a reference to the exposure of that employee to a substance hazardous to health arising out of or in connection with work at the workplace: reg 2(2). 'Workplace' means any premises or part of premises used for or in connection with work, and includes any place within the premises to which an employee has access while at work; and any room, lobby, corridor, staircase, road or other place (i) used as a means of access to or egress from that place of work; or (ii) where facilities are provided for use in connection with that place of work, other than a public road; and 'public road' means, in England and Wales, a highway maintainable at the public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248): Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1).

4     I.e. the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894: see PARA 796.

5     I.e. the Control of Lead at Work Regulations 2002, SI 2002/2676: see PARA 641 et seq.

6     I.e. the Control of Asbestos Regulations 2006, SI 2006/2739: see PARA 630 et seq.

7 For these purposes, 'hazard', in relation to a substance, means the intrinsic property of that substance which has the potential to cause harm to the health of a person, and 'hazardous' is to be construed accordingly: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 2(1).

8 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 5(1) (amended by SI 2006/2739 and SI 2007/1894). For the purposes of head (3) in the text, 'medical treatment' means medical or dental examination or treatment which is conducted by, or under the direction of a registered medical practitioner, registered dentist or other person who is an appropriate practitioner for the purposes of the Medicines Act 1968 s 58, and includes any such examination or treatment conducted for the purpose of research: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 5(2). 'Registered dentist' has the meaning assigned to it in the Dentists Act 1984 s 53(1); 'medical examination' includes any laboratory tests and X-rays that a relevant doctor may require; 'relevant doctor' means an appointed doctor or an employment medical adviser; 'employment medical adviser' means an employment medical adviser appointed under the Health and Safety at Work etc Act 1974 s 56 (see PARA 384); and 'appointed doctor' means a registered medical practitioner appointed for the time being in writing by the Health and Safety Executive for the purpose of the 2002 regulations: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1).

9 As to the meaning of 'employee' see PARA 302 note 4.

10 The duties of the employer (1) under the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11 (health surveillance: see PARA 624) do not extend to persons who are not his employees; and (2) under regs 10, 12(1), (2) and 13 (which relate respectively to monitoring, information and training and dealing with accidents: see PARAS 624-626) do not extend to persons who are not his employees, unless those persons are on the premises where the work is being carried out: reg 3(1)(a), (b).

11 As to what is reasonably practicable see PARA 417.

12 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 3(1).

13 The Control of Substances Hazardous to Health Regulations, SI 2002/2677, regs 10, 11 (see PARA 624) do not apply to a self-employed person: reg 3(2). As to the meaning of 'self-employed person' see PARA 302 note 5.

14 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 3(2).

15 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 3(3) (substituted by SI 2004/3386). For these purposes 'ship' includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 3(3) (as so substituted). With that exception, the 2002 regulations apply to and in relation to any activity outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) (Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 17(1)); but they do not extend to Northern Ireland except in so far as they relate to imports of substances and articles referred to in reg 4(2) (see PARA 619) into the United Kingdom (reg 17(2)). As to the meanings of 'Great Britain' and 'United Kingdom' see PARA 305 notes 7-8.

16 For these purposes, 'Her Majesty's Forces' means any of the naval, military or air forces of the Crown, whether raised inside or outside the United Kingdom and whether any such force is a regular, auxiliary or reserve force, and includes any civilian employed by those forces: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 16(1)(a).

17 For these purposes, 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 16(1)(b).

18 For these purposes, 'headquarters' means a headquarters for the time being specified in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 16(1)(c).

19 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 16(2).

20 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 16(2). Further, reg 11(11) (see PARA 624) does not apply in relation to (1) any visiting force; or (2) members of a visiting force working in or attached to a headquarters: reg 16(3).

21 As to the Health and Safety Executive see PARA 361 et seq.

22 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 15(1). The Executive may, by a certificate in writing, exempt any person or class of persons or any substance or class of substances from all or any of the requirements or prohibitions imposed by reg 4 (see [PARA 619](#)) (to the extent permitted by EC Council Directive 98/24 (OJ L131, 05.05.1998, p 11) art 9), by the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, regs 8, 9, 11(8), (10), (11) and 14 (see [PARA 623 et seq](#)) and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 15(1).

23 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 15(2).

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**621. Assessment of the risk to health created by work involving substances hazardous to health.**

An employer may not carry out work which is liable to expose any employees<sup>1</sup> to any substance hazardous to health<sup>2</sup> unless he has:

- 1003 (1) made a suitable and sufficient assessment of the risk<sup>3</sup> created by that work to the health of those employees and of the steps that need to be taken to meet the requirements of the relevant regulations<sup>4</sup>; and
- 1004 (2) implemented the steps referred to in head (1) above<sup>5</sup>.

The risk assessment must include consideration of:

- 1005 (a) the hazardous<sup>6</sup> properties of the substance;
- 1006 (b) information on health effects provided by the supplier, including information contained in any relevant safety data sheet<sup>7</sup>;
- 1007 (c) the level, type and duration of exposure;
- 1008 (d) the circumstances of the work, including the amount of the substance involved;
- 1009 (e) activities, such as maintenance, where there is the potential for a high level of exposure;
- 1010 (f) any relevant workplace exposure limit<sup>8</sup> or similar occupational exposure limit;
- 1011 (g) the effect of preventive and control measures which have been or will be taken<sup>9</sup>;
- 1012 (h) the results of relevant health surveillance<sup>10</sup>;
- 1013 (i) the results of monitoring of exposure<sup>11</sup>;
- 1014 (j) in circumstances where the work will involve exposure to more than one substance hazardous to health, the risk presented by exposure to such substances in combination;
- 1015 (k) the approved classification<sup>12</sup> of any biological agent; and
- 1016 (l) such additional information as the employer may need in order to complete the risk assessment<sup>13</sup>.

The risk assessment must be reviewed regularly and forthwith if:

- 1017 (i) there is reason to suspect that the risk assessment is no longer valid;
- 1018 (ii) there has been a significant change in the work to which the risk assessment relates; or
- 1019 (iii) the results of any monitoring carried out<sup>14</sup> show it to be necessary,

and where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>15</sup>.

Where the employer employs five or more employees, he must record the significant findings of the risk assessment as soon as is practicable<sup>16</sup> after the risk assessment is made<sup>17</sup>. He must also record the steps which he has taken to meet the prescribed requirements<sup>18</sup> for the prevention or control of exposure<sup>19</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'substance hazardous to health', and as to exposure of employees to such substances, see PARA 620 note 3.

3 As to the meaning of 'risk' see PARA 620 note 2.

4 I.e. the requirements of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARAS 619-620; the text and notes 5-19; and PARA 622 et seq.

5 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 6(1).

6 As to the meaning of 'hazardous' see PARA 620 note 7.

7 'Safety data sheet' means a safety data sheet within the meaning of European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (amended by SI 2009/716).

8 As to the meaning of 'workplace exposure limit' see PARA 620 note 3.

9 I.e. in accordance with the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7: see PARA 622. 'Control measure' means a measure taken to reduce exposure to a substance hazardous to health (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, the provision and use of engineering controls and personal protective equipment); and 'personal protective equipment' means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to his health, and any addition or accessory designed to meet that objective: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1). As to the meaning of 'workplace' see PARA 620 note 3.

10 'Health surveillance' means assessment of the state of health of an employee, as related to exposure to substances hazardous to health, and includes biological monitoring: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 2(1).

11 I.e. in accordance with the Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 10: see PARA 624.

12 'Approved classification' of a biological agent means the classification of that agent approved by the Health and Safety Executive: Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 2(1) (definition amended by SI 2008/960). As to the meanings of 'approved' and 'biological agent' see PARA 620 note 3.

13 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 6(2) (amended by SI 2004/3386). The Health and Safety Executive has issued guidance on risk assessment for these purposes: see *A Guide to Risk Assessment Requirements* (HSE, INDG218, 1996; reprinted in January 2004).

14 See note 11.

15 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 6(3).

16 As to the meaning of 'as soon as is practicable' see PARA 417.

17 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 6(4)(a).

18 I.e. the requirements of the Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 7: see PARA 622.

19 Control of Substances Hazardous to Health Regulations, SI 2002/2677, reg 6(4)(b).



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## **622. Prevention or control of exposure to substances hazardous to health.**

Every employer must ensure that the exposure of his employees<sup>1</sup> to substances hazardous to health<sup>2</sup> is either prevented or, where this is not reasonably practicable<sup>3</sup>, adequately<sup>4</sup> controlled<sup>5</sup>. In complying with his duty of prevention under the above provision, substitution must by preference be undertaken, whereby the employer must avoid, so far as is reasonably practicable, the use of a substance hazardous to health at the workplace<sup>6</sup> by replacing it with a substance or process which, under the conditions of its use, either eliminates or reduces the risk<sup>7</sup> to the health of his employees<sup>8</sup>.

Where it is not reasonably practicable to prevent exposure to a substance hazardous to health, the employer must comply with his duty of control under the above provision by applying protection measures appropriate to the activity and consistent with the risk assessment, including, in order of priority:

- 1020 (1) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials;
- 1021 (2) the control of exposure at source, including adequate ventilation systems and appropriate organisational measures; and
- 1022 (3) where adequate control of exposure cannot be achieved by other means, the provision of suitable personal protective equipment<sup>9</sup> in addition to the measures required by heads (1) and (2) above<sup>10</sup>.

The measures referred to in heads (1) to (3) above must include:

- 1023 (a) arrangements for the safe handling, storage and transport of substances hazardous to health, and of waste containing such substances, at the workplace;
- 1024 (b) the adoption of suitable maintenance procedures;
- 1025 (c) reducing, to the minimum required for the work concerned, the number of employees subject to exposure, the level and duration of exposure and the quantity of substances hazardous to health present at the workplace;
- 1026 (d) the control of the working environment, including appropriate general ventilation; and
- 1027 (e) appropriate hygiene measures including adequate washing facilities<sup>11</sup>.

Where it is not reasonably practicable to prevent exposure to a carcinogen<sup>12</sup> or mutagen<sup>13</sup>, the employer must apply the following measures in addition<sup>14</sup> to those required by heads (1) to (3) above:

- 1028 (i) totally enclosing the process and handling systems, unless this is not reasonably practicable;
- 1029 (ii) the prohibition of eating, drinking and smoking in areas that may be contaminated by carcinogens or mutagens;

- 1030 (iii) cleaning floors, walls and other surfaces at regular intervals and whenever necessary;
- 1031 (iv) designating those areas and installations which may be contaminated by carcinogens or mutagens and using suitable and sufficient warning signs; and
- 1032 (v) storing, handling and disposing of carcinogens or mutagens safely, including using closed and clearly labelled containers<sup>15</sup>.

Where it is not reasonably practicable to prevent exposure to a biological agent<sup>16</sup>, the employer must apply the following measures in addition<sup>17</sup> to those required by heads (1) to (3) above:

- 1033 (A) displaying suitable and sufficient warning signs, including the prescribed biohazard sign<sup>18</sup>;
- 1034 (B) specifying appropriate decontamination and disinfection procedures;
- 1035 (C) instituting means for the safe collection, storage and disposal of contaminated waste, including the use of secure and identifiable containers, after suitable treatment where appropriate;
- 1036 (D) testing, where it is necessary and technically possible, for the presence, outside the primary physical confinement, of biological agents used at work;
- 1037 (E) specifying procedures for working with, and transporting at the workplace, a biological agent or material that may contain such an agent;
- 1038 (F) where appropriate, making available effective vaccines for those employees who are not already immune to the biological agent to which they are exposed or are liable to be exposed;
- 1039 (G) instituting hygiene measures compatible with the aim of preventing or reducing the accidental transfer or release of a biological agent from the workplace, including the provision of appropriate and adequate washing and toilet facilities, and, where appropriate, the prohibition of eating, drinking, smoking and the application of cosmetics in working areas where there is a risk of contamination by biological agents; and
- 1040 (H) where there are human patients or animals which are, or are suspected of being, infected with a Group 3 or 4 biological agent<sup>19</sup>, the employer must select the most suitable control and containment measures from those specified<sup>20</sup> with a view to controlling adequately the risk of infection<sup>21</sup>.

Further specific provision is made with regard to work with biological agents<sup>22</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'substances hazardous to health', and as to exposure of employees to such substances, see PARA 620 note 3.

3 As to what is reasonably practicable see PARA 417.

4 For these purposes, 'adequate' means adequate having regard only to the nature of the substance and the nature and degree of exposure to substances hazardous to health and 'adequately' is to be construed accordingly: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(11). Without prejudice to the generality of reg 7(1) (see the text and notes 1-3, 5), where there is exposure to a substance hazardous to health, control of that exposure is only to be treated as adequate if (1) the principles of good practice for the control of exposure to substances hazardous to health set out in Sch 2A are applied; (2) any workplace exposure limit approved for that substance is not exceeded; and (3) for a substance (a) which carries the risk phrase R45, R46 or R49, or for a substance or process which is listed in Sch 1 (see note 12); or (b) which carries the risk phrase R42 or R42/43, or which is listed in section C of HSE publication 'Asthma? Critical assessments of the evidence for agents implicated in occupational asthma' as updated from time to time, or any other substance which the risk assessment has shown to be a potential cause of occupational asthma, exposure is reduced to as low a level as is reasonably practicable: reg 7(7) (substituted by SI 2004/3386). As to the meaning of 'workplace exposure limit' see PARA 620 note 3. 'Risk phrase' has the meaning assigned to it in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716,

reg 2(1) (see PARA 571 note 4): Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (definition added by SI 2004/3886; and amended by SI 2009/716). 'Risk assessment' means the assessment of risk required by the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 6(1)(a) (see PARA 621): reg 2(1).

The principles of good practice for the control of exposure to substances hazardous to health as set out in Sch 2A (added by SI 2004/3386) are:

- 229 (i) design and operate processes and activities to minimise emission, release and spread of substances hazardous to health;
- 230 (ii) take into account all relevant routes of exposure - inhalation, skin absorption and ingestion - when developing control measures;
- 231 (iii) control exposure by measures that are proportionate to the health risk;
- 232 (iv) choose the most effective and reliable control options which minimise the escape and spread of substances hazardous to health;
- 233 (v) where adequate control of exposure cannot be achieved by other means, provide, in combination with other control measures, suitable personal protective equipment;
- 234 (vi) check and review regularly all elements of control measures for their continuing effectiveness;
- 235 (vii) inform and train all employees on the hazards and risks from the substances with which they work and the use of control measures developed to minimise the risks;
- 236 (viii) ensure that the introduction of control measures does not increase the overall risk to health and safety.

5 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(1); and see *Dugmore v Swansea NHS Trust* [2002] EWCA Civ 1689, [2003] 1 All ER 333, [2003] ICR 574; *Naylor v Volex Group plc* [2003] EWCA Civ 222, [2003] All ER (D) 200 (Feb).

6 As to the meaning of 'workplace' see PARA 620 note 3.

7 As to the meaning of 'risk' see PARA 620 note 2.

8 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(2).

9 Personal protective equipment provided by an employer in accordance with the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7 must be suitable for the purpose and must (1) comply with any provision in the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARA 567) which is applicable to that item of personal protective equipment; or (2) in the case of respiratory protective equipment, where no provision so referred applies, be of a type approved or conform to a standard approved, in either case, by the Health and Safety Executive: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(9). As to the meaning of 'personal protective equipment' for these purposes see PARA 621 note 9; and as to the meaning of 'approved' see PARA 620 note 3. As to the Health and Safety Executive see PARA 361 et seq.

10 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(3).

11 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(4).

12 'Carcinogen' means (1) a substance or preparation which if classified in accordance with the classification provided for by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4 (see PARA 571) would be in the category of danger, carcinogenic (category 1) or carcinogenic (category 2) whether or not the substance or preparation would be required to be classified under those regulations; or (2) a substance or preparation either listed in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 1, or arising from a process specified in Sch 1 which is a substance hazardous to health: reg 2(1) (amended by SI 2009/716). The specified substances, preparations and processes are (a) aflatoxins; (b) arsenic; (c) auramine manufacture; (d) calcining, sintering or smelting of nickel copper matte or acid leaching or electrorefining of roasted matte; (e) coal soots, coal tar, pitch and coal tar fumes; (f) hardwood dusts; (g) isopropyl alcohol manufacture (strong acid process); (h) leather dust in boot and shoe manufacture, arising during preparation and finishing; (i) magenta manufacture; (j) mustard gas; (k) rubber manufacturing and processing giving rise to rubber process dust and rubber fume; (l) used engine oils; (m) the following polychlorodibenzodioxins: 2,3,7,8-TCDD; 1,2,3,7,8-PeCDD; 1,2,3,4,7,8-HxCDD; 1,2,3,6,7,8-HxCDD; 1,2,3,7,8,9-HxCDD; 1,2,3,4,6,7,8-HpCDD; OCDD; (n) the following polychlorodibenzofurans: 2,3,7,8-TCDF; 2,3,4,7,8-PeCDF;

1,2,3,7,8-PeCDF; 1,2,3,4,7,8-HxCDF; 1,2,3,7,8,9-HxCDF; 1,2,3,6,7,8-HxCDF; 2,3,4,6,7,8-HxCDF; 1,2,3,4,6,7,8-HpCDF; 1,2,3,4,7,8,9-HpCDF; OCDF (where T=tetra, Pe=penta, Hx=hexa, Hp=hepta and O=octa): Sch 1 (amended by SI 2003/978). 'Preparation' means a mixture or solution of two or more substances: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1). As to the meaning of 'substance' see PARA 619 note 1.

13 'Mutagen' means a substance or preparation which if classified in accordance with the classification provided for by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4 (see PARA 571) would be in the category of danger, mutagenic (category 1) or mutagenic (category 2) whether or not the substance or preparation would be required to be classified under those Regulations: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (definition added by SI 2003/978; and amended by SI 2009/716).

14 Ie and without prejudice to the generality of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(1).

15 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(5) (amended by SI 2003/978).

16 As to the meaning of 'biological agent' see PARA 620 note 3.

17 See note 14.

18 Ie the biohazard sign shown in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(10), Sch 3 Pt IV.

19 'Group', in relation to a biological agent, means one of the four hazard Groups specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 3 para 2 to which that agent is assigned: reg 2(1). Where a biological agent does not have an approved classification, the employer must provisionally classify that agent in accordance with the following provision, having regard to the nature of the agent and the properties of which he may reasonably be expected to be aware: Sch 3 Pt I para 2(1). When provisionally classifying a biological agent the employer must assign that agent to one of the following Groups according to its level of risk of infection and, if in doubt as to which of two alternative Groups is the most appropriate, he must assign it to the higher of the two: (1) Group 1--unlikely to cause human disease; (2) Group 2--can cause human disease and may be a hazard to employees; it is unlikely to spread to the community and there is usually effective prophylaxis or treatment available; (3) Group 3--can cause severe human disease and may be a serious hazard to employees; it may spread to the community, but there is usually effective prophylaxis or treatment available; (4) Group 4--causes severe human disease and is a serious hazard to employees; it is likely to spread to the community and there is usually no effective prophylaxis or treatment available: Sch 3 Pt I para 2(2). Where an employer is using a biological agent which has an approved classification and the risk of infection for that particular agent is different to that expected, the employer must reclassify the agent in consultation with the Health and Safety Executive as if performing a provisional classification under Sch 3 Pt I para 2(2): Sch 3 Pt I para 2(3). As to the meaning of 'approved classification' see PARA 621 note 12.

20 Ie from those listed in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 3 Pt II. Schedule 3 Pt II, which lists containment measures for health and veterinary care facilities, laboratories and animal rooms, is not set out in detail in this work.

21 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(6).

22 Without prejudice to the provisions of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7, Sch 3 has effect in relation to work with biological agents: reg 7(10). Schedule 3 is not set out in detail in this work. As to special control measures for laboratories, animal rooms and industrial processes see Sch 3 Pt I para 3, Pts II, III; as to the requirement to keep a list of employees exposed to a Group 3 or Group 4 biological agent see Sch 3 Pt I para 4; as to the requirement to give advance notification to the Health and Safety Executive of the use of biological agents see Sch 3 Pt I para 5, Pt V; and as to the requirement to give advance notification of the consignment of biological agents see Sch 3 Pt I para 6.

For the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), the meaning of 'work' (see PARA 302 note 1) is extended to include any activity involving the consignment, storage or use of a Group 2, 3 or 4 biological agent and the meaning of 'at work' is to be extended accordingly, and in that connection the references to 'employer' in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 3 paras 5 and 6 include references to any persons carrying out such an activity: reg 19. The Health and Safety at Work etc Act 1974 s 3(2) (see PARA 422) is modified in relation to an activity involving the consignment, storage or use of any of the biological agents referred to in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 19 so as to have effect as if the reference therein to a self-employed person is a reference to any person who is not an employer or an employee and the reference therein to his undertaking includes a reference to such an activity: reg 20.



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**623. Use, maintenance, examination and testing of control measures etc.**

Every employer who provides any control measure<sup>1</sup>, other thing or facility in accordance with the relevant regulations<sup>2</sup> must take all reasonable steps to ensure that it is properly used or applied as the case may be<sup>3</sup>. Every employee<sup>4</sup> must make full and proper use of any control measure, other thing or facility so provided and, where relevant, must take all reasonable steps to ensure it is returned after use to any accommodation provided for it and, if he discovers a defect therein, report it forthwith to his employer<sup>5</sup>.

Every employer who provides any control measure to meet the prescribed requirements<sup>6</sup> must ensure that:

- 1041 (1) in the case of plant and equipment, including engineering controls and personal protective equipment<sup>7</sup>, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and
- 1042 (2) in the case of the provision of systems of work and supervision and of any other measure, it is reviewed at suitable intervals and revised if necessary<sup>8</sup>.

Where engineering controls are provided to meet those requirements, the employer must ensure that thorough examination and testing of those controls is carried out:

- 1043 (a) in the case of local exhaust ventilation plant, at least once every 14 months, or for local exhaust ventilation plant used in conjunction with a specified process<sup>9</sup>, at not more than the specified interval<sup>10</sup>; or
- 1044 (b) in any other case, at suitable intervals<sup>11</sup>.

Where respiratory protective equipment, other than disposable respiratory protective equipment, is provided to meet the prescribed requirements<sup>12</sup>, the employer must ensure that thorough examination and, where appropriate, testing of that equipment is carried out at suitable intervals<sup>13</sup>.

Every employer must keep a suitable record of the examinations and tests carried out in accordance with the above provisions and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary of it must be kept available for at least five years from the date on which it was made<sup>14</sup>.

Every employer must ensure that personal protective equipment, including protective clothing, is:

- 1045 (i) properly stored in a well-defined place;
- 1046 (ii) checked at suitable intervals; and
- 1047 (iii) when discovered to be defective, repaired or replaced before further use<sup>15</sup>.

Personal protective equipment which may be contaminated by a substance hazardous to health<sup>16</sup> must be removed on leaving the working area and kept apart from uncontaminated

clothing and equipment<sup>17</sup>. The employer must ensure that such equipment is subsequently decontaminated and cleaned or, if necessary, destroyed<sup>18</sup>.

- 1 As to the meaning of 'control measure' see PARA 621 note 9.
- 2 Ie in accordance with the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARAS 619-622; the text and notes 3-18; and PARA 624 et seq.
- 3 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 8(1).
- 4 As to the meaning of 'employee' see PARA 302 note 4.
- 5 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 8(2).
- 6 Ie the requirements of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7: see PARA 622.
- 7 As to the meaning of 'personal protective equipment' see PARA 621 note 9.
- 8 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(1) (substituted by SI 2004/3386).
- 9 Ie a process specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(2)(a), Sch 4 col 1.
- 10 Ie the interval specified in the corresponding entry in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 4 col 2. The specified processes and intervals are (1) processes in which blasting is carried out in or incidental to the cleaning of metal castings, in connection with their manufacture, one month; (2) processes, other than wet processes, in which metal articles (other than of gold, platinum or iridium) are ground, abraded or polished using mechanical power, in any room for more than 12 hours in any week, six months; (3) processes giving off dust or fume in which non-ferrous metal castings are produced, six months; and (4) jute cloth manufacture, one month: Sch 4.
- 11 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(2).
- 12 See note 6.
- 13 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(3).
- 14 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(4).
- 15 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(5).
- 16 As to the meaning of 'substances hazardous to health' see PARA 620 note 3.
- 17 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(6).
- 18 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 9(7).

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**624. Monitoring exposure at the workplace and health surveillance.**

Where the risk assessment<sup>1</sup> indicates that:

- 1048 (1) it is requisite for ensuring the maintenance of adequate control of the exposure of employees<sup>2</sup> to substances hazardous to health<sup>3</sup>; or
- 1049 (2) it is otherwise requisite for protecting the health of employees,

the employer must ensure that the exposure of employees to substances hazardous to health is monitored in accordance with a suitable procedure<sup>4</sup>. This does not, however, apply where the employer is able to demonstrate by another method of evaluation that the statutory requirements<sup>5</sup> have been complied with<sup>6</sup>.

The above-mentioned monitoring must take place at regular intervals and when any change occurs which may affect that exposure<sup>7</sup>. Where a substance or process is specified for these purposes<sup>8</sup>, monitoring must be carried out at least at the specified frequency<sup>9</sup>.

The employer must ensure that a suitable record of monitoring carried out for these purposes is made and maintained and that that record or a suitable summary of it is kept available:

- 1050 (a) where the record is representative of the personal exposures of identifiable employees, for at least 40 years; or
- 1051 (b) in any other case, for at least five years,

from the date of the last entry made in it<sup>10</sup>. Where an employee is required to be under health surveillance<sup>11</sup>, an individual record of any monitoring carried out in accordance with these provisions must be made, maintained and kept in respect of that employee<sup>12</sup>. The employer must, on reasonable notice being given, allow an employee access to his personal monitoring record<sup>13</sup>. He must also provide the Health and Safety Executive<sup>14</sup> with copies of such monitoring records as the Executive may require<sup>15</sup> and, if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all monitoring records kept by him<sup>16</sup>.

Where it is appropriate for the protection of the health of his employees who are, or are liable to be, exposed to a substance hazardous to health, the employer must ensure that such employees are under suitable health surveillance<sup>17</sup>. Health surveillance is to be treated as being appropriate where either the employee is exposed to one of the specified substances<sup>18</sup> and is engaged in a specified process<sup>19</sup> and there is a reasonable likelihood that an identifiable disease or adverse health effect will result from that exposure<sup>20</sup> or the exposure of the employee to a substance hazardous to health is such that:

- 1052 (i) an identifiable disease or adverse health effect may be related to the exposure;
- 1053 (ii) there is a reasonable likelihood that the disease or effect may occur under the particular conditions of his work; and
- 1054 (iii) there are valid techniques for detecting indications of the disease or effect,



and the technique of investigation is of low risk<sup>21</sup> to the employee<sup>22</sup>.

The employer must ensure that a health record, containing particulars approved<sup>23</sup> by the Executive, in respect of each of his employees to whom the requirement for health surveillance<sup>24</sup> applies, is made and maintained and that that record or a copy of it is kept available in a suitable form for at least 40 years from the date of the last entry made in it<sup>25</sup>. The employer must, on reasonable notice being given, allow an employee access to his personal health record<sup>26</sup>. He must also provide the Executive with copies of such health records as the Executive may require<sup>27</sup> and, if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all health records kept by him<sup>28</sup>.

An employee to whom the requirement for health surveillance applies must, when required by his employer and at the cost of the employer, present himself during his working hours for such health surveillance procedures as may be required for these purposes<sup>29</sup>.

Where, as a result of health surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor or other occupational health professional to be the result of exposure to a substance hazardous to health the employer of that employee must:

- 1055 (A) ensure that a suitably qualified person informs the employee accordingly and provides the employee with information and advice regarding further health surveillance;
- 1056 (B) review the risk assessment;
- 1057 (C) review any measure taken to comply with the statutory requirements<sup>30</sup>, taking into account any advice given by a relevant doctor, occupational health professional or by the Executive;
- 1058 (D) consider assigning the employee to alternative work where there is no risk of further exposure to that substance, taking into account any advice given by a relevant doctor or occupational health professional; and
- 1059 (E) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination where such an examination is recommended by a relevant doctor, occupational health professional or by the Executive<sup>31</sup>.

Where, for the purpose of carrying out his functions under the relevant regulations<sup>32</sup>, a relevant doctor requires to inspect any workplace<sup>33</sup> or any record kept for those purposes, the employer must permit him to do so<sup>34</sup>.

Where an employee or an employer is aggrieved by a decision recorded in the health record by a relevant doctor to suspend an employee from work<sup>35</sup> which exposes him to a substance hazardous to health, or to impose conditions on such work, he may, by an application in writing to the Executive within 28 days of the date on which he was notified of the decision, apply for that decision to be reviewed in accordance with a procedure approved for these purposes by the Health and Safety Executive, and the result of that review must be notified to the employee and employer and entered in the health record in accordance with the approved procedure<sup>36</sup>.

1 As to the meaning of 'risk assessment' see PARA 622 note 4.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'substance hazardous to health', and as to exposure of employees to such substances, see PARA 620 note 3.

4 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(1).

5 le the requirements of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 7(1): see PARA 622.

6 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(2).

7 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(3).

8 le specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 5 col 1: see note 9.

9 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(4). The frequency is that specified in Sch 5 col 2. Schedule 5 (amended by SI 2008/906) specifies the following substances or processes and minimum frequency: (1) in respect of vinyl chloride monomer, continuous monitoring or monitoring in accordance with a procedure approved by the Health and Safety Executive; (2) in respect of spray given off from vessels at which an electrolytic chromium process is carried on, except trivalent chromium, monitoring every 14 days while the process is being carried on.

10 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(5).

11 le by the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11: see the text and notes 17-36. As to the meaning of 'health surveillance' see PARA 621 note 10.

12 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(6).

13 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(7)(a).

14 As to the Health and Safety Executive see PARA 361 et seq.

15 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(7)(b). In so far as the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, apply to, or in connection with, any activities in relation to which the Office of Rail Regulation is made the enforcing authority by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195), the 2002 regulations have effect as the references to the Health and Safety Executive in reg 10(7)(b) and reg 11(4) (b) (see the text and note 27) were references to the Office of Rail Regulation: reg 16A(1), (2)(a), (b) (reg 16A added by SI 2006/557).

16 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10(7)(c).

17 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(1).

18 le substance specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(2), Sch 6 col 1: see note 19.

19 le a process specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 6 col 2. The specified substances and processes are (1) vinyl chloride monomer (VCM), in manufacture, production, reclamation, storage, discharge, transport, use or polymerisation; (2) nitro or amino derivatives of phenol and of benzene or its homologues, in the manufacture of nitro or amino derivatives of phenol and of benzene or its homologues and the making of explosives with the use of any of these substances; (3) potassium or sodium chromate or dichromate, in manufacture; (4) ortho-tolidine and its salts, dianisidine and its salts and dichlorobenzidine and its salts, in manufacture, formation or use of these substances; (5) auramine and magenta, in manufacture; (6) carbon disulphide, disulphur dichloride, benzene, including benzol, carbon tetrachloride, trichlorethylene, processes in which these substances are used, or given off as vapour, in the manufacture of indiarubber or of articles or goods made wholly or partially of indiarubber; (7) pitch, in manufacture of blocks of fuel consisting of coal, coal dust, coke or slurry with pitch as a binding substance.

If an employee is exposed to a substance specified in Sch 6 and is engaged in a process specified therein, the health surveillance required under reg 11(1) must include medical surveillance under the supervision of a relevant doctor at intervals of not more than 12 months or at such shorter intervals as the relevant doctor may require: reg 11(5). Where an employee is subject to medical surveillance in accordance with reg 11(5) and a relevant doctor has certified by an entry in the health record of that employee that in his professional opinion that employee should not be engaged in work which exposes him to that substance or that he should only be so engaged under conditions specified in the record, the employer may not permit the employee to be engaged in such work except in accordance with the conditions, if any, specified in the health record, unless that entry has been cancelled by a relevant doctor: reg 11(6). Where an employee is subject to medical surveillance in accordance with reg 11(5) and a relevant doctor has certified by an entry in his health record that medical surveillance should be continued after his exposure to that substance has ceased, the employer must ensure that the medical surveillance of that employee is continued in accordance with that entry while he is employed

by the employer, unless that entry has been cancelled by a relevant doctor: reg 11(7). As to the meaning of 'relevant doctor' see PARA 620 note 8.

20 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(2)(a).

21 As to the meaning of 'risk' see PARA 620 note 2.

22 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(2)(b).

23 As to the meaning of 'approved' see PARA 620 note 3.

24 Ie the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(1).

25 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(3).

26 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(4)(a).

27 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(4)(b). See note 15.

28 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(4)(c).

29 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(8). In the case of an employee who is subject to medical surveillance in accordance with reg 11(5) (see note 19), he must furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require: reg 11(8).

30 See note 5.

31 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(9).

32 Ie the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARAS 619-623; the text and notes 1-31, 33-36; and PARA 625 et seq.

33 As to the meaning of 'workplace' see PARA 620 note 3.

34 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(10).

35 As to suspension from work see further PARA 455.

36 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(11) (amended by SI 2008/960). As to the disapplication of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11(11) see PARA 620 note 20.

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**625. Information, instruction and training for persons who may be exposed to substances hazardous to health.**

Every employer who undertakes work<sup>1</sup> which is liable to expose an employee<sup>2</sup> to a substance hazardous to health<sup>3</sup> must provide that employee with suitable and sufficient information, instruction and training<sup>4</sup>. The information, instruction and training so provided must<sup>5</sup> include:

- 1060 (1) details of the substances hazardous to health to which the employee is liable to be exposed including:
  - 135
  - 215. (a) the names of those substances and the risk<sup>6</sup> which they present to health;
  - 216. (b) any relevant workplace exposure limit<sup>7</sup> or similar occupational exposure limit;
  - 217. (c) access to any relevant safety data sheet<sup>8</sup>; and
  - 218. (d) other legislative provisions which concern the hazardous properties of those substances;
  - 136
- 1061 (2) the significant findings of the risk assessment<sup>9</sup>;
- 1062 (3) the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other employees at the workplace<sup>10</sup>;
- 1063 (4) the results of any monitoring of exposure<sup>11</sup> and, in particular, in the case of a substance hazardous to health for which a workplace exposure limit has been approved<sup>12</sup>, the employee or his representatives must be informed forthwith, if the results of such monitoring show that the workplace exposure limit has been exceeded;
- 1064 (5) the collective results of any health surveillance undertaken<sup>13</sup> in a form calculated to prevent those results from being identified as relating to a particular person; and
- 1065 (6) where employees are working with a Group 4 biological agent<sup>14</sup> or material that may contain such an agent, the provision of written instructions and, if appropriate, the display of notices which outline the procedures for handling such an agent or material<sup>15</sup>.

The information, instruction and training so required must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer<sup>16</sup> and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment<sup>17</sup>.

Every employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under the relevant regulations<sup>18</sup> has suitable and sufficient information, instruction and training<sup>19</sup>.

Where containers and pipes for substances hazardous to health used at work are not marked in accordance with any relevant legislation<sup>20</sup>, the employer must, without prejudice to any derogations provided for in that legislation, ensure that the contents of those containers and

pipes, together with the nature of those contents and any associated hazards, are clearly identifiable<sup>21</sup>.

- 1 As to the meaning of 'work' see PARA 622 note 22.
- 2 As to the meaning of 'employee' see PARA 302 note 4.
- 3 As to the meaning of 'substance hazardous to health', and as to the exposure of employees to such substances, see PARA 620 note 3.
- 4 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(1).
- 5 Ie without prejudice to the generality of the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(1); reg 12(2).
- 6 As to the meaning of 'risk' see PARA 620 note 2.
- 7 As to the meaning of 'workplace exposure limit' see PARA 620 note 3.
- 8 As to the meaning of 'safety data sheet' see PARA 621 note 7.
- 9 As to the meaning of 'risk assessment' see PARA 622 note 4.
- 10 As to the meaning of 'workplace' see PARA 620 note 3.
- 11 Ie in accordance with the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 10: see PARA 624.
- 12 As to the meaning of 'approved' see PARA 620 note 3.
- 13 Ie in accordance with the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 11: see PARA 624.
- 14 As to the meaning of 'biological agent' see PARA 620 note 3; and as to the meaning of 'Group' in relation to such an agent see PARA 622 note 19.
- 15 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(2) (amended by SI 2004/3386).
- 16 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(3)(a).
- 17 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(3)(b).
- 18 Ie under the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see PARAS 619-624, 626-627.
- 19 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(4).
- 20 Ie any relevant legislation listed in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 7. The legislation so listed is (1) the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341 (see PARA 445); (2) the Good Laboratory Practice Regulations 1999, SI 1999/3106 (see PARAS 580-581); (3) the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689 (revoked: see now the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716) (see PARAS 571-572); and (4) the Carriage of Dangerous Goods and Use of Transportable Equipment Regulations 2007, SI 2007/1573: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 7 (substituted by SI 2004/568; and amended by SI 2007/1573).
- 21 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 12(5).

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## **626. Arrangements to deal with accidents, incidents and emergencies.**

Subject to certain exceptions<sup>1</sup> and without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations 1999<sup>2</sup>, in order to protect the health of his employees<sup>3</sup> from an accident, incident or emergency related to the presence of a substance hazardous to health<sup>4</sup> at the workplace<sup>5</sup>, the employer must ensure that:

- 1066 (1) procedures, including the provision of appropriate first-aid facilities and relevant safety drills (which must be tested at regular intervals), have been prepared which can be put into effect when such an event occurs;
- 1067 (2) information on emergency arrangements, including details of relevant work hazards<sup>6</sup> and hazard identification arrangements and specific hazards likely to arise at the time of an accident, incident or emergency, is available; and
- 1068 (3) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs<sup>7</sup>.

The employer must ensure that information on the procedures and systems required by heads (1) and (3) above, and the information required by head (2) above, is made available to relevant accident and emergency services to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures<sup>8</sup> and is displayed at the workplace, if this is appropriate<sup>9</sup>.

Subject to certain exceptions<sup>10</sup>, in the event of an accident, incident or emergency related to the presence of a substance hazardous to health at the workplace, the employer must ensure that:

- 1069 (a) immediate steps are taken to mitigate the effects of the event, restore the situation to normal, and inform those of his employees who may be affected;
- 1070 (b) only those persons who are essential for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with appropriate personal protective equipment<sup>11</sup> and any necessary specialised safety equipment and plant, which must be used until the situation is restored to normal; and
- 1071 (c) in the case of an incident or accident which has or may have resulted in the release of a biological agent which could cause severe human disease, as soon as practicable<sup>12</sup> thereafter his employees or their representatives are informed of the causes of that incident or accident, and of the measures taken or to be taken to rectify the situation<sup>13</sup>.

An employee must report forthwith, to his employer or to any other employee of that employer with specific responsibility for the health and safety of his fellow employees, any accident or incident which has or may have resulted in the release of a biological agent which could cause severe human disease<sup>14</sup>.

- 1     le subject to the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(4). Regulation 13(1) (see the text and notes 2-7) and, provided the substance hazardous to health is not a carcinogen, mutagen or biological agent, reg 13(3) (see the text and notes 10-13) do not apply where (1) the results of the risk assessment show that, because of the quantity of each substance hazardous to health present at the workplace, there is only a slight risk to the health of employees; and (2) the measures taken by the employer to comply with the duty under reg 7(1) (see PARA 622) are sufficient to control that risk: reg 13(4) (amended by SI 2003/978). As to the meanings of 'carcinogen' and 'mutagen' see PARA 622 notes 12-13; and as to the meaning of 'biological agent' see PARA 620 note 3.
- 2     le the relevant provisions of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 428 et seq.
- 3     As to the meaning of 'employee' see PARA 302 note 4.
- 4     As to the meaning of 'substance hazardous to health', and as to the exposure of employees to such substances, see PARA 620 note 3.
- 5     As to the meaning of 'workplace' see PARA 620 note 3.
- 6     As to the meaning of 'hazard' see PARA 620 note 7.
- 7     Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(1).
- 8     Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(2)(a).
- 9     Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(2)(b).
- 10    See note 1.
- 11    As to the meaning of 'personal protective equipment' see PARA 621 note 9.
- 12    As to when is as soon as practicable see PARA 417.
- 13    Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(3).
- 14    Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 13(5).

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## 627. Provisions relating to certain fumigations.

An employer may not undertake certain fumigations<sup>1</sup> unless he has:

- 1072 (1) notified the specified persons<sup>2</sup> of his intention to undertake the fumigation; and
- 1073 (2) provided to those persons the specified information<sup>3</sup>,

at least 24 hours in advance, or such shorter time in advance as the persons required to be notified may agree<sup>4</sup>.

An employer who undertakes such a fumigation must ensure that, before the fumigant is released, suitable warning notices have been affixed at all points of reasonable access to the premises<sup>5</sup> or to those parts of the premises in which the fumigation is to be carried out and that after the fumigation has been completed, and the premises are safe to enter, those warning notices are removed<sup>6</sup>.

1 The Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14 (see the text and notes 2-6) applies to fumigations in which the fumigant used or intended to be used is hydrogen cyanide, phosphine or methyl bromide, except that reg 14(2) does not apply to fumigations using the fumigant specified in Sch 8 col 1 when the nature of the fumigation is that specified in the corresponding entry in Sch 8 col 2: reg 14(1). The specified fumigants and fumigations are (1) hydrogen cyanide, in relation to fumigations carried out for research, fumigations in fumigation chambers and fumigations in the open air to control or kill mammal pests; (2) methyl bromide, in relation to fumigations carried out for research, fumigations in fumigation chambers, fumigations of soil outdoors under gas-proof sheeting where not more than 1000 kg is used in any period of 24 hours on the premises, fumigations of soil under gas-proof sheeting in glasshouses where not more than 500 kg is used in any period of 24 hours on the premises, fumigations of compost outdoors under gas-proof sheeting where not more than 10 kg of methyl bromide is used in any period of 24 hours on the premises, fumigations under gas-proof sheeting inside structures other than glasshouses and mushroom houses where not more than 5 kg of methyl bromide is used in each structure during any period of 24 hours, fumigations of soil or compost in mushroom houses where not more than 5 kg of methyl bromide is used in any one fumigation in any period of 24 hours and fumigations of containers where not more than 5 kg of methyl bromide is used in any one fumigation in a period of 24 hours; (3) phosphine, in relation to fumigations carried out for research, fumigations in fumigation chambers, fumigations under gas-proof sheeting inside structures where not more than 1 kg of phosphine in each structure is used in any period of 24 hours, fumigations in containers where not more than 0.5 kg of phosphine is used in any one fumigation in any period of 24 hours, fumigations in individual impermeable packages and fumigations in the open air to control or kill mammal pests: reg 14(1), Sch 8.

For these purposes, 'fumigation' means an operation in which a substance is released into the atmosphere so as to form a gas to control or kill pests or other undesirable organisms and 'fumigate' and 'fumigant' are to be construed accordingly: reg 2(1). As to the meaning of 'substance' see PARA 619 note 1.

2 The persons specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 Pt I. In the case of a fumigation to be carried out within the area of a harbour authority, advance notification of fumigation must, for the purposes of reg 14(2)(a) (see head (1) in the text), be given to (1) that authority; (2) an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see PARA 375), if that inspector so requires; and (3) where the fumigation (a) is to be carried out on a sea-going ship, the chief fire officer of the area in which the ship is situated and the officer in charge of the office of Her Majesty's Revenue and Customs at the harbour; or (b) is the space fumigation of a building, the chief fire officer of the area in which the building is situated: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(2), Sch 9 Pt I para 1; Commissioners for Revenue and Customs Act 2005 s 50(1), (7). In the case of a fumigation, other than a fumigation to which the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 Pt I para 1 applies, advance notification of fumigation must be given to



(i) the police officer for the time being in charge of the police station for the police district in which the fumigation is carried out; (ii) an inspector appointed under the Health and Safety at Work etc Act 1974 s 19, if that inspector so requires; and (iii) where the fumigation is to be carried out on a sea-going ship or is the space fumigation of a building, the chief fire officer of the area in which the ship or building is situated: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 Pt I para 2.

3 The information specified in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 Pt II. The information to be given in a notification made for the purposes of reg 14(2) must include the following: (1) the name, address and place of business of the fumigator and his telephone number; (2) the name of the person requiring the fumigation to be carried out; (3) the address and description of the premises where the fumigation is to be carried out; (4) the date on which the fumigation is to be carried out and the estimated time of commencement and completion; (5) the name of the operator in charge of the fumigation; and (6) the fumigant to be used: Sch 9 Pt II para 3.

4 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(2).

5 As to the meaning of 'premises' see PARA 302 note 6.

6 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(3).

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## ***B. DANGEROUS CHEMICALS ETC***

### **628. Notification of activities.**

Except in relation to a licensed waste disposal site<sup>1</sup>, a person may not undertake any activity in which there is or is liable to be at any time a notifiable quantity<sup>2</sup> or more of a hazardous substance<sup>3</sup> at any site<sup>4</sup> unless he has notified specified particulars<sup>5</sup> in writing to the Health and Safety Executive<sup>6</sup> at least three months (or, in the case of a hazardous substance consisting of ammonium nitrate or a mixture containing ammonium nitrate, at least four weeks), before commencing that activity or before such shorter time as the Executive may agree<sup>7</sup>.

Where an activity has been notified in this way, and the person having control of the activity makes a change in it, including an increase or a reduction in the maximum quantity of any hazardous substance which is or is liable to be at the site, or the cessation of the activity, which affects the particulars specified in that or any subsequent notification<sup>8</sup>, he must forthwith notify the Executive of the change<sup>9</sup>. The quantity of a substance notified<sup>10</sup> must not be increased to an amount three or more times that originally notified unless the activity has been re-notified as if it were a new activity<sup>11</sup>.

The Executive may, by certificate in writing, exempt any person or class of persons, activity or class of activities to which the above provisions apply from any requirement or prohibition imposed by them and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>12</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to:

- 1074 (1) the conditions, if any, which it proposes to attach to the exemption; and
- 1075 (2) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it<sup>13</sup>.

Except where ammonium nitrate or a mixture containing ammonium nitrate is the hazardous substance by reason of which the activity is notifiable<sup>14</sup>, the enforcing authority for the relevant statutory provisions in relation to any site where there is a notifiable activity or an activity which is required to be taken into account<sup>15</sup> is the Health and Safety Executive<sup>16</sup>.

The provisions of the Petroleum (Consolidation) Act 1928<sup>17</sup> do not apply to any site in respect of which notification of an activity is required pursuant to the above provisions<sup>18</sup>.

1    le a site which is licensed for the disposal of such waste by a licence issued in pursuance of the Control of Pollution Act 1974 s 5 (repealed subject to transitional provisions: see now the Waste Management Licensing Regulations 1994, SI 1994/1056; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 623-624, 661): Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 3(3).

2    'Notifiable quantity' means (1) in the case of a substance specified in the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 1 Pt I col 1, the quantity of that substance specified in the corresponding entry in Sch 1 Pt I col 2; (2) in the case of substances of a class specified in Sch 1

Pt II col 1, the total quantity of all substances of that class specified in the corresponding entry in Sch 1 Pt II col 2; and in either case the quantity is to be determined in accordance with reg 3(2): reg 2(1). For the purposes of reg 3(1), in determining whether there is a notifiable quantity of a hazardous substance at a site, account must be taken of any quantity of that substance which is (a) in that part of any pipeline under the control of the person having control of the site, which is within 500 metres of that site and connected to it; (b) at any other site under the control of the same person any part of the boundary of which is within 500 metres of the site; and (c) any vehicle, vessel, aircraft or hovercraft under the control of the same person which is used for storage purposes either at the site or within 500 metres of it; but no account may be taken of any hazardous substance which is in a vehicle, vessel, aircraft or hovercraft used for transporting it: reg 3(2). See further note 3. As to the meanings of 'hazardous substance' and 'site' see notes 3-4.

3 'Hazardous substance' means a substance specified in the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 1 Pt I col 1 or substances of any class specified in Sch 1 Pt II col 1: reg 2(1).

The named substances and the notifiable quantities in tonnes in respect of them are as follows: (1) liquefied petroleum gas, such as commercial propane and commercial butane, and any mixtures thereof held at a pressure greater than 1.4 bar absolute, 25; (2) liquefied petroleum gas, such as commercial propane and commercial butane, and any mixture thereof held under refrigeration at a pressure of 1.4 bar absolute or less, 50; (3) phosgene, 2; (4) chlorine, 10; (5) hydrogen fluoride, 10; (6) sulphur trioxide, 15; (7) acrylonitrile, 20; (8) hydrogen cyanide, 20; (9) carbon disulphide, 20; (10) sulphur dioxide, 20; (11) bromine, 40; (12) ammonia (anhydrous or as solution containing more than 50% by weight of ammonia), 100; (13) hydrogen, 2; (14) ethylene oxide, 5; (15) propylene oxide, 5; (16) tert-Butyl peroxyacetate, 5; (17) tert-Butyl peroxyisobutyrate, 5; (18) tert-Butyl peroxy isopropyl carbonate, 5 (19) dibenzyl peroxydicarbonate, 5; (20) 2,2-Bis(tert-butylperoxy)butane, 5; (21) 1,1-Bis(tert-butylperoxy)cyclohexane, 5; (22) Di-sec-butyl peroxydicarbonate, 5; (23) 2,2-Dihydroperoxypropane, 5; (24) Di-n-propyl peroxydicarbonate, 5; (25) methyl ethyl ketone peroxide, 5; (26) sodium chlorate, 25; (27) cellulose nitrate other than (a) cellulose nitrate to which the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, apply; or (b) solutions of cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and the solution contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution, 50; (28) ammonium nitrate and mixtures containing ammonium nitrate where the nitrogen content exceeds 15.75% of the mixture by weight, 150; (29) aqueous solutions containing more than 90 parts by weight of ammonium nitrate per 100 parts by weight of solution, 500; and (30) liquid oxygen, 500: Sch 1 Pt I (amended by SI 2002/2979 and SI 2005/1082).

The classes of substances not specifically named, and their notifiable quantities in tonnes, are as follows: (i) gas or any mixture of gases which is flammable in air and is held in the installation as a gas, 15; (ii) a substance or any mixture of substances which is flammable in air and is normally held in the installation above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute, 25, being the total quantity of substances above the boiling points whether held singly or in mixtures; (iii) a liquefied gas or any mixture of liquefied gases, which is flammable in air, has a boiling point of less than 0 degrees C (measured at 1 bar absolute) and is normally held in the installation under refrigeration or cooling at a pressure of 1.4 bar absolute or less, 50, being the total quantity of substances having boiling points below 0 degrees C whether held singly or in mixtures; (iv) a liquid or any mixture of liquids not included in items 1-3 above, which has a flash point of less than 21 degrees C, 10,000: Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 1 Pt II.

4 'Site' means (1) the whole of an area of land under the control of a person and includes a pier, jetty or similar structure whether floating or not; or (2) a structure, whether floating or not, which is within the inland waters of Great Britain and which is under the control of a person: Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 2(1).

5 The particulars are those specified in the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 2. Those particulars are: (1) the name and address of the person making the notification; (2) the full postal address of the site where the notifiable activity will be carried on and its Ordnance Survey grid reference; (3) the area of the site covered by the notification and of any adjacent site which is required to be taken into account by virtue of reg 3(2); (4) the date on which it is anticipated that the notifiable activity will commence, or if it has already commenced a statement to that effect; (5) a general description of the activities carried on or intended to be carried on there; (6) the name and address of the planning authority in whose area the notifiable activity is being or is to be carried on; and (7) the name and maximum quantity liable to be on the site of each hazardous substance for which notification is being made: Sch 2 (amended by SI 1996/825).

6 As to the Health and Safety Executive see PARA 361 et seq.

7 Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 3(1) (amended by SI 1996/825 and SI 2002/2979). For these purposes, an activity in which subsequently there is or is liable to be a notifiable quantity or more of an additional hazardous substance is deemed to be a different activity and must be notified accordingly: Notification of Installations Handling Hazardous Substances

Regulations 1982, SI 1982/1357, reg 3(1). For transitional provisions regarding ammonium nitrate see reg 9 (added by SI 2002/2979).

8     le under the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 4 or reg 5.

9     Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 4 (amended by SI 1996/825).

10    le under the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 2 para 7.

11    Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 5 (amended by SI 1996/825).

12    Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 6(1).

13    Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 6(2).

14    Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 7(1A) (added by SI 2002/2979).

15    le by virtue of the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 3(2): see note 2.

16    See the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 7(1). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

17    See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1625-1626.

18    Petroleum (Consolidation) Act 1928 s 25A(1)(b) (added by SI 1999/743; renumbered by SI 2002/2776).

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## **629. Marking of sites where dangerous substances are present.**

A person in control of a site<sup>1</sup> must ensure that there is not present at any one time a total quantity of 25 tonnes or more of a dangerous substance<sup>2</sup> at the site unless the prescribed particulars<sup>3</sup> have been notified in writing to the fire authority<sup>4</sup> and the enforcing authority<sup>5</sup>. Where a notification has been so made and a specified change<sup>6</sup> takes place, the person in control of the site must forthwith notify that change in writing to the fire authority and the enforcing authority<sup>7</sup>; and where a cessation or reduction in quantity of the presence of dangerous substances<sup>8</sup> has been so notified, any resumption in the presence of a total quantity of 25 tonnes or more of dangerous substances at the site must be subject to a fresh notification<sup>9</sup>.

The person in control of a site must ensure that there is not present at any one time a total quantity of 25 tonnes or more of dangerous substances at the site unless safety signs<sup>10</sup> are displayed at such places as will give adequate warning to firemen before entering the site in an emergency that dangerous substances are present<sup>11</sup>. An inspector<sup>12</sup> may give directions to the person in control of a site requiring him to display, at all times when a total quantity of 25 tonnes or more of dangerous substances is present at the site<sup>13</sup>, safety signs<sup>14</sup> at such locations within the site as are specified in the directions<sup>15</sup>; but such directions may only be given where the inspector is satisfied on reasonable grounds that:

- 1076 (1) there is or is liable to be present at any one time a total quantity of 25 tonnes or more of dangerous substances at the site; and
- 1077 (2) the display of safety signs at the locations to be specified in the directions is necessary in order to warn firemen in an emergency that dangerous substances are present at those locations<sup>16</sup>.

The person to whom such directions are given must comply with those directions, but safety signs need not be displayed at a location specified in the directions at a time when dangerous substances are not present at that location<sup>17</sup>. The person in control of the site must, so far as is reasonably practicable<sup>18</sup>, ensure that any safety signs displayed at the site pursuant to the above provisions are kept clean and free from obstruction<sup>19</sup>.

The Health and Safety Executive<sup>20</sup> may, by certificate in writing, exempt any person or class of persons or any activity or class of activities to which the above provisions apply from any requirement imposed by them and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>21</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to:

- 1078 (a) the conditions, if any, which it proposes to attach to the exemption; and
- 1079 (b) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it<sup>22</sup>.

1 'Site' means (1) the whole of an area of land under the control of a person and includes a pier, jetty or similar structure whether floating or not; or (2) a structure, whether floating or not, which is within the inland waters of Great Britain and which is under the control of a person: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 2(1). Any reference for these purposes to the person in control of a site is a reference to the person having such control in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): reg 2(2). As to inland waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 63 et seq. As to the meaning of 'Great Britain' see PARA 305 note 7.

2 For these purposes, 'dangerous substance' means any substance which falls within the definition of 'dangerous goods' in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 ('CDG 2007'), reg 2(1) (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, reg 2(3)) (see PARA 555 note 2) and any reference to 'dangerous substances', except in the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(5) (see note 14) includes a reference to one dangerous substance: reg 2(1) (amended by SI 1994/669; SI 1996/2092; SI 2004/568; and SI 2007/1573). In the definitions for these purposes of 'classification' (see note 3) and 'dangerous substance' the references to CDG 2007 (now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348) apply as if the substances in question were being carried by road: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 2(1A) (added by SI 2004/568; and amended by SI 2007/1573).

For these purposes, in determining the total quantity of dangerous substances present at a site account is to be taken of any quantity of such substances which are in any vehicle, vessel, aircraft or hovercraft under the control of the person in control of the site which is used for storage purposes at the site; but no account is to be taken of any dangerous substances which are in a vehicle, vessel, aircraft or hovercraft used for transporting them or in the fuel tank of a vehicle, vessel, aircraft or hovercraft: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 2(3).

The 1990 regulations do not apply to or in relation to (1) dangerous substances which have been buried or deposited in the ground at the site as waste (whether in bulk, in drums or in other containers); (2) substances which are dangerous substances by reason only that they are radioactive substances; (3) substances which on classification as defined in the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) (see **EXPLOSIVES** vol 17(2) (Reissue) PARA 904) are classified as class 1 goods within the meaning of (a) the Carriage Regulations; (b) the International Maritime Dangerous Goods Code as revised or reissued from time to time; or (c) the Technical Instructions for the Safe Transport of Dangerous Goods by Air as revised or reissued from time to time; (4) aerosol dispensers unless they are labelled in accordance with the Carriage Regulations (see **CARRIAGE AND CARRIERS**), or would be required to be so labelled if they were being carried: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 3, Sch 1 para 1 (amended by SI 1993/1746; SI 1994/669; SI 2004/568; and SI 2007/1573).

3 The prescribed particulars are (1) the name and address of the person making the notification; (2) the full postal address of the site; (3) a general description of the nature of the business carried on or intended to be carried on there; (4) a list of the classification of the dangerous substances present or liable to be present; and (5) the date on which a total quantity of 25 tonnes or more will be present, or, if they are already present, a statement to that effect: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4(1), Sch 2 Pt I paras 1-5. 'Classification' in relation to a dangerous substance (except in Sch 1 para 1(c): see note 2) means the classification for that substance ascertained in accordance with the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 47 (whether or not the substance is required to be classified for the purposes of those regulations): Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 2(1) (amended by SI 2007/1573). Note that the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, have been revoked and replaced by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which do not make equivalent provision as to classification.

4 'Fire authority' in relation to any site means the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area in which the site is situated (see **FIRE SERVICES**): Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 2(1) (amended by SI 2004/3168 (England); SI 2005/2929 (Wales)).

5 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4(1). For transitional provisions see reg 10. The enforcing authority for these purposes is the fire authority except that (1) the enforcing authority for reg 4 is to be ascertained in accordance with the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see PARAS 370, 372); and (2) the enforcing authority for the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, regs 5-7 in relation to a site occupied by a body specified in the Health and Safety (Enforcing Authority) Regulations 1998, SI

1998/494, reg 4(3) (see PARA 370 note 12) is the Health and Safety Executive: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 8; Interpretation Act 1978 s 17(2).

The Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4 (which relates to notification) does not apply to (a) sites which are notifiable to the Executive in accordance with the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357 (see PARA 628); (b) sites at which there is an industrial activity to which the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6 applies (see PARA 663); (c) sites in respect of which a licence is in force for the keeping of substances under the Petroleum (Consolidation) Act 1928; (d) sites within the area of a harbour authority in relation to which the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 27 applies (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 707); (e) sites in respect of which a waste disposal licence is in force (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 620, 662 et seq); (f) sites in respect of which a nuclear site licence is in force under the Nuclear Installations Act 1965 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487 et seq): Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 1 para 2; Interpretation Act 1978 s 17(2). Nor (in so far as it requires notification to be made to the fire authority) does it apply to a site being premises to which the Greater London Council (General Powers) Act 1975 s 3 applies if a notice under s 3(3)(b) has been given to the occupier of the premises at any time before 1 September 1990: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 1 para 3.

6     le a change specified in the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4(1), Sch 2 Pt II. The specified changes are (1) the cessation of the presence of dangerous substances at the site other than a temporary cessation; (2) the reduction of the total quantity of dangerous substances present at the site to below 25 tonnes at the site other than a temporary reduction; (3) any change in the list of classifications previously notified under Sch 4 Pt I para 4 (see note 3 head 4)), including any change in that list as previously revised pursuant to this provision: Sch 2 Pt II paras 1-3.

7     Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4(2).

8     le a change specified in the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 2 Pt II paras 1, 2: see note 6 heads (1)-(2).

9     Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 4(3).

10    The safety signs referred to in the text must be warning signs as defined by the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pt II para 3.2, bearing the hazard warning symbol (but not the text) shown in the last entry of the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 3 col 2; and all such signs must comply with the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pt II with respect to colours and layout: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 5(2) (amended by SI 1996/341). As to safety signs generally see PARA 445. The Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 3 is not set out in detail in this work.

11    Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 5(1), the heading to which, though not the regulation itself, refers to 'access marking'. Regulations 5 and 6 (which relate to access and location marking respectively) do not apply to petroleum filling stations as formerly defined in the Petroleum (Consolidation) Act 1928 s 23 (definition now repealed): Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, Sch 1 para 4.

12    As to the meaning of 'inspector' see PARA 375 note 2.

13    Any reference in the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6 to the presence of dangerous substances at a location is a reference to the presence of dangerous substances at or within the vicinity of that location: reg 6(8).

14    The safety signs referred to in the text must be warning signs as defined by the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341, Sch 1 Pt II para 3.2 and all such signs must comply with Sch 1 Pt II with respect to colours and layout (see PARA 445): Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(3) (amended by SI 1996/341). The warning signs and supplementary signs must bear the hazard warning symbol and hazard warning text respectively: Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(4). The hazard warning symbol and hazard warning text must be (1) in the case where there is one dangerous substance or there are two or more dangerous substances with the same classification at the location where the signs are displayed, that specified in Sch 3 col 2 appropriate to the classification of such substance or substances specified opposite thereto in Sch 3 col 1 of that Schedule; (2) in the case where there are two or more dangerous substances with different classifications at the location where the signs are displayed, that specified in Sch 3 col 2 opposite the entry for 'Mixed hazards' in Sch 3 col 1: reg 6(5).

- 15 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(1), the heading to which, though not the regulation itself, refers to 'location marking'. Directions may be given in any reasonable manner as the inspector thinks fit, and may be withdrawn at any time: reg 6(6).
- 16 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(2).
- 17 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 6(7).
- 18 As to what is reasonably practicable see PARA 417.
- 19 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 7.
- 20 As to the Health and Safety Executive see PARA 361 et seq.
- 21 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 9(1).
- 22 Dangerous Substances (Notification and Marking of Sites) Regulations 1990, SI 1990/304, reg 9(2).



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## **C ASBESTOS**

### **(A) CONTROL OF ASBESTOS AT WORK**

#### **630. Duty to manage asbestos in non-domestic premises.**

In order to enable him to manage the risk from asbestos<sup>1</sup> in non-domestic premises<sup>2</sup>, the dutyholder<sup>3</sup> must ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises<sup>4</sup>. In making the assessment, such steps as are reasonable in the circumstances<sup>5</sup> must be taken<sup>6</sup> and the condition of any asbestos which is, or has been assumed to be, present in the premises must be considered<sup>7</sup>. The dutyholder must ensure<sup>8</sup> that account is taken of building plans or other relevant information and of the age of the premises and that an inspection is made of those parts of the premises which are reasonably accessible<sup>9</sup>.

The dutyholder must ensure that the assessment<sup>10</sup> is reviewed forthwith if there is reason to suspect that the assessment is no longer valid<sup>11</sup> or there has been a significant change in the premises to which the assessment relates<sup>12</sup>. He must also ensure that the conclusions of the assessment and every review are recorded<sup>13</sup>.

Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder must ensure that:

- 1080 (1) a determination of the risk from that asbestos is made;
- 1081 (2) a written plan identifying those parts of the premises concerned is prepared; and
- 1082 (3) the measures which are to be taken for managing the risk are specified in the written plan<sup>14</sup>.

The dutyholder must ensure that:

- 1083 (a) the plan<sup>15</sup> is reviewed and revised at regular intervals, and forthwith if there is reason to suspect that the plan is no longer valid, or if there has been a significant change in the premises to which the plan relates;
- 1084 (b) the measures specified in the plan are implemented; and
- 1085 (c) the measures taken to implement the plan are recorded<sup>16</sup>.

Every person must co-operate with the dutyholder so far as is necessary to enable the dutyholder to comply with his duties under these provisions<sup>17</sup>.

The Health and Safety Executive<sup>18</sup> may, by a certificate in writing, exempt any person or class of persons from all or any of the requirements or prohibitions imposed by the above provisions and by certain other provisions of the relevant regulations<sup>19</sup> and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a further certificate in writing at any time<sup>20</sup>. The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case and in particular to the conditions, if any, which

it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>21</sup>.

Subject to an exception in the case of an act or default of an employee or appointed health and safety assistant of that person<sup>22</sup>, in any proceedings for an offence consisting of a contravention of the relevant regulations<sup>23</sup> it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence<sup>24</sup>.

The regulations are supported by an approved code of practice<sup>25</sup>.

1 'Asbestos' means the following fibrous silicates: (1) asbestos actinolite, CAS No 77536-66-4(\*); (2) asbestos grunerite (amosite), CAS No 12172-73-5(\*); (3) asbestos anthophyllite, CAS No 77536-67-5(\*); (4) chrysotile, CAS No 12001-29-5; (5) crocidolite, CAS NO 12001-28-4(\*); and (6) asbestos tremolite, CAS No 77536-68-6(\*); and references to 'CAS' followed by a numerical sequence are references to CAS Registry Numbers assigned to chemicals by the Chemical Abstracts Service, a division of the American Chemical Society: Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).

2 As to the meaning of 'premises' see PARA 302 note 6.

3 For these purposes, 'dutyholder' means (1) every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access thereto or egress therefrom; or (2) in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access thereto or egress therefrom; and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements set out in the text will be determined by the nature and extent of the maintenance and repair obligation owed by that person: Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(1). With the exception of reg 20(4) (which came into force on 6 April 2007: see PARA 635 note 22), the 2006 regulations came into force on 13 November 2006: reg 1.

4 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(3). For these purposes, a reference to the 'premises' is a reference to the non-domestic premises referred to in reg 4(1) (see note 3): reg 4(11)(b). The Control of Asbestos Regulations 2006, SI 2006/2739, do not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master, and for these purposes 'ship' includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy: reg 3(6). The regulations apply to any work outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as they apply to work in Great Britain: Control of Asbestos Regulations 2006, SI 2006/2739, reg 34. As to the meaning of 'Great Britain' see PARA 305 note 7.

5 As to what is reasonable see PARA 417.

6 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(4)(a).

7 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(4)(b).

8 le without prejudice to the generality of the Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(4): reg 4(5).

9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(5).

10 For these purposes, a reference to the 'assessment' is a reference to the assessment required by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(3) (see the text and notes 1-4): reg 4(11)(a).

11 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(6)(a).

12 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(6)(b).

13 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(7).

14 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(8). The measures to be specified in the plan for managing the risk must include adequate measures for (1) monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos; (2) ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and (3) ensuring that information about the location

and condition of any asbestos or any such substance is (a) provided to every person liable to disturb it; and (b) made available to the emergency services: reg 4(9). 'Adequate' means adequate having regard only to the nature and degree of exposure to asbestos and 'adequately' is to be construed accordingly: reg 2(1). 'Emergency services' includes police, fire, rescue and ambulance services and Her Majesty's Coastguard: reg 2(1).

15 For these purposes, a reference to the 'plan' is a reference to the plan required by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(8) (see heads (1)-(3) in the text): reg 4(11)(c).

16 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(10).

17 Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(2).

18 As to the Health and Safety Executive see PARA 361 et seq.

19 Ie the Control of Asbestos Regulations 2006, SI 2006/2739, regs 8, 12, 13, 21, 22(5) and (7): see PARAS 632, 635, 636.

20 Control of Asbestos Regulations 2006, SI 2006/2739, reg 32(1) (amended by SI 2008/2852).

21 Control of Asbestos Regulations 2006, SI 2006/2739, reg 32(4). Where under an exemption granted pursuant to reg 32 asbestos is used in a work process or is produced by a work process, the employer must ensure that the quantity of asbestos and materials containing asbestos at the premises where the work is carried out is reduced to as low a level as is reasonably practicable: reg 31(1). Where under an exemption granted pursuant to reg 32 a manufacturing process which gives rise to asbestos dust is carried out in a building, the employer must ensure that any part of the building in which the process is carried out is (1) so designed and constructed as to facilitate cleaning; and (2) equipped with an adequate and suitable vacuum cleaning system which must, where reasonably practicable, be a fixed system: reg 31(2). Head (1) above does not apply, however, to a building in which, prior to 1 March 1988, there was carried out a process to which either (a) as then in force, the Asbestos Regulations 1969, SI 1969/690, reg 13 (revoked) applied and the process was carried out in compliance with that regulation; or (b) that regulation did not apply: Control of Asbestos Regulations 2006, SI 2006/2739, reg 31(3).

22 Ie subject to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21: see PARA 859.

23 Ie a contravention of the Control of Asbestos Regulations 2006, SI 2006/2739, Pt 2 (regs 4-24).

24 Control of Asbestos Regulations 2006, SI 2006/2739, reg 37. As to offences and penalties see generally PARA 852 et seq.

25 See the Approved Code of Practice and Guidance on the Management of Asbestos in Non-domestic Premises (ACoP L127). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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**631. Identification of presence of asbestos and assessment of work exposing employees to it.**

An employer<sup>1</sup> must not undertake work in demolition, maintenance, or any other work which exposes or is liable to expose his employees<sup>2</sup> to asbestos<sup>3</sup> in respect of any premises<sup>4</sup> unless either:

- 1086 (1) he has carried out a suitable and sufficient assessment as to whether asbestos, what type of asbestos, contained in what material and in what condition is present or is liable to be present in those premises; or
- 1087 (2) if there is doubt as to whether asbestos is present in those premises he assumes that asbestos is present, and that it is not chrysotile alone and observes the applicable provisions of the relevant regulations<sup>5</sup>.

An employer must not carry out work which is liable to expose his employees to asbestos unless he has:

- 1088 (a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of the relevant regulations<sup>6</sup>;
- 1089 (b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and
- 1090 (c) implemented the steps referred to in head (a) above<sup>7</sup>.

The risk assessment<sup>8</sup> must<sup>9</sup>:

- 1091 (i) subject to heads (1) and (2) above, identify the type of asbestos to which employees are liable to be exposed;
- 1092 (ii) determine the nature and degree of exposure which may occur in the course of the work<sup>10</sup>;
- 1093 (iii) consider the effect of control measures<sup>11</sup> which have been or will be taken<sup>12</sup>;
- 1094 (iv) consider the results of monitoring of exposure<sup>13</sup>;
- 1095 (v) set out the steps to be taken to prevent that exposure or reduce it to the lowest level reasonably practicable<sup>14</sup>;
- 1096 (vi) consider the results of any relevant medical surveillance; and
- 1097 (vii) include such additional information as the employer may need in order to complete the risk assessment<sup>15</sup>.

The risk assessment must be reviewed regularly and forthwith if:

- 1098 (A) there is reason to suspect that the existing risk assessment is no longer valid;

- 1099 (b) there is a significant change in the work to which the risk assessment relates; or  
 1100 (c) the results of any monitoring carried out<sup>16</sup> show it to be necessary,

and where, as a result of the review, changes to the risk assessment are required, those changes must be made and, where they relate to the significant findings of the risk assessment or are themselves significant, recorded<sup>17</sup>.

1 The Control of Asbestos Regulations 2006, SI 2006/2739, apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee: reg 3(1). As to the meanings of 'employee' and 'self-employed person' see PARA 302 notes 4-5.

2 Where a duty is placed by the Control of Asbestos Regulations 2006, SI 2006/2739, on an employer in respect of his employees, he is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work activity carried out by the employer except that the duties of the employer (1) under reg 10 (information, instruction and training: see PARA 633) do not extend to persons who are not his employees unless those persons are on the premises where the work is being carried out; and (2) under reg 22 (health records and medical surveillance: see PARA 636) do not extend to persons who are not his employees: reg 3(4). See also note 1.

3 For the purposes of the Control of Asbestos Regulations 2006, SI 2006/2739, except in accordance with reg 11(3), (5) (see PARA 634), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the control limit, no account is to be taken of respiratory protective equipment which, for the time being, is being worn by that employee: Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(2). 'Control limit' means a concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method, or by a method giving equivalent results to that method approved by the Health and Safety Executive, of 0.1 fibres per cubic centimetre of air averaged over a continuous period of four hours: reg 2(1) (definition amended by SI 2008/960). '1997 WHO recommended method' means the publication 'Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)', WHO (World Health Organisation), Geneva 1997: Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1). 'Approved' means approved for the time being in writing by the Health and Safety Executive: reg 2(1) (definition amended by SI 2008/960). As to the meaning of 'asbestos' see PARA 630 note 1; and as to the Health and Safety Executive see PARA 361 et seq.

4 As to the meaning of 'premises' see PARA 302 note 6.

5 Control of Asbestos Regulations 2006, SI 2006/2739, reg 5. The relevant regulations are the 2006 regulations. As to the application of those regulations see PARA 630 note 4.

6 Ie the requirements of the Control of Asbestos Regulations 2006, SI 2006/2739.

7 Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(1).

8 For these purposes, 'risk assessment' means the assessment of risk required by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(1)(a): reg 2(1).

9 Ie without prejudice to the generality of the Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(1): reg 6(2).

10 Where, in accordance with the requirement in the Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(2)(b) (see head (ii) in the text), the risk assessment has determined that the exposure of his employees to asbestos may exceed the control limit, the employer must keep a copy of the significant findings of that risk assessment at those premises at which, and for such time as, the work to which that risk assessment relates is being carried out: reg 6(4).

11 'Control measure' means a measure taken to prevent or reduce exposure to asbestos (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, and the provision and use of engineering controls and personal protective equipment); and 'personal protective equipment' means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to his health, and any addition or accessory designed to meet that objective: Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).

12 Ie in accordance with Control of Asbestos Regulations 2006, SI 2006/2739, reg 11: see PARA 634.

13 Ie in accordance with Control of Asbestos Regulations 2006, SI 2006/2739, reg 19: see PARA 635.

14 As to what is reasonably practicable see PARA 417.

15 Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(2). The Health and Safety Executive has issued guidance on risk assessment for these purposes: see *A Guide to Risk Assessment Requirements* (HSE, INDG218, 1996; reprinted in January 2004).

16 Ie pursuant to the Control of Asbestos Regulations 2006, SI 2006/2739, reg 19: see PARA 635.

17 Control of Asbestos Regulations 2006, SI 2006/2739, reg 6(3).

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### **632. Plans of work and notification of work.**

An employer<sup>1</sup> must not undertake any work with asbestos<sup>2</sup> unless he has prepared a suitable written plan of work (the 'plan of work') detailing how that work is to be carried out<sup>3</sup>. The employer must keep a copy of the plan of work at those premises at which the work to which the plan relates is being carried out for such time as that work continues<sup>4</sup>. In cases of final demolition or major refurbishment of premises, the plan of work must, so far as is reasonably practicable<sup>5</sup>, and unless it would cause a greater risk to employees than if the asbestos had been left in place, specify that asbestos is to be removed before any other major works begin<sup>6</sup>.

The plan of work must include in particular details of:

- 1101 (1) the nature and probable duration of the work;
- 1102 (2) the location of the place where the work is to be carried out;
- 1103 (3) the methods to be applied where the work involves the handling of asbestos or materials containing asbestos;
- 1104 (4) the characteristics of the equipment to be used for (a) protection and decontamination of those carrying out the work; (b) protection of other persons on or near the worksite; and
- 1105 (5) the measures which the employer intends to take in order to comply with the relevant requirements<sup>7</sup> as to cleanliness and to prevent or reduce exposure to asbestos<sup>8</sup>.

The employer must ensure, so far as is reasonably practicable, that the work to which the plan of work relates is carried out in accordance with that plan and any subsequent written changes to it<sup>9</sup>.

Subject to certain exceptions<sup>10</sup>, an employer may not carry out work with asbestos unless he has notified the appropriate office of the enforcing authority<sup>11</sup> in writing of the specified particulars<sup>12</sup> at least 14 days before commencing that work or before such shorter time as the enforcing authority may agree<sup>13</sup>. Where an employer has so notified work and there is a material change in that work which might affect the particulars so notified, including the cessation of the work, the employer must forthwith notify the enforcing authority of that change<sup>14</sup>.

Further, subject to certain exceptions<sup>15</sup>, an employer may not undertake any work with asbestos unless he holds a licence relating to such work<sup>16</sup>. The Health and Safety Executive may grant a licence for work with asbestos if it considers it appropriate to do so and (i) the person who wishes the licence to be granted to him has made application for it on a form approved for the time being for these purposes by the Executive; and (ii) the application was made at least 28 days before the date from which the licence is to run, or such shorter period as the Executive may allow<sup>17</sup>. A licence comes into operation on the date specified in the licence, and is valid for any period up to a maximum of three years that the Executive may specify in it; and a licence may be granted subject to such conditions as the Executive may consider appropriate<sup>18</sup>.

The Executive may vary the terms of a licence if it considers it appropriate to do so and in particular may add further conditions and vary or omit existing ones and may reduce the period for which the licence is valid or extend that period up to a maximum of three years from the date on which the licence first came into operation<sup>19</sup>. The Executive may also revoke a licence if it considers it appropriate to do so<sup>20</sup>. The holder of a licence must return the licence to the Executive when required by the Executive for any amendment or following revocation<sup>21</sup>.

The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons from all or any of the requirements as to licensing and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a further certificate in writing at any time<sup>22</sup>. The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>23</sup>.

There are approved codes of practice covering work with asbestos<sup>24</sup> and the Health and Safety Executive has provided extensive guidance<sup>25</sup>.

1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.

2 As to the meaning of 'asbestos' see PARA 630 note 1. A reference to work with asbestos in the Control of Asbestos Regulations 2006, SI 2006/2739, includes (1) work which consists of the removal, repair or disturbance of asbestos or materials containing asbestos; (2) work which is ancillary to such work; and (3) supervision of such work and such ancillary work: reg 2(3).

3 Control of Asbestos Regulations 2006, SI 2006/2739, reg 7(1). As to the application of the 2006 regulations see PARA 630 note 4. The Health and Safety Executive may exempt emergency services from all or any of the requirements or prohibitions imposed by reg 7 or reg 9 (see the text to notes 10-14) and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time: reg 32(3). The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 32(4). As to the meaning of 'emergency services' see PARA 630 note 14. As to the Health and Safety Executive see PARA 361 et seq.

4 Control of Asbestos Regulations 2006, SI 2006/2739, reg 7(2).

5 As to the meaning of 'reasonably practicable' see PARA 417.

6 Control of Asbestos Regulations 2006, SI 2006/2739, reg 7(3).

7 As to the requirements of the Control of Asbestos Regulations 2006, SI 2006/2739, regs 11, 17: see PARAS 634-635.

8 Control of Asbestos Regulations 2006, SI 2006/2739, reg 7(4).

9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 7(5).

10 Subject to the Control of Asbestos Regulations 2006, SI 2006/2739, reg 3(3), regs 8 (licensing: see the text and notes 15-21), 9 (notification of work with asbestos: see the text and notes 10-14), 15(1) (arrangements to deal with accidents, incidents and emergencies: see PARA 637), 18(1)(a) (asbestos areas: see PARA 635) and 22 (health records and medical surveillance: see PARA 636) do not apply where (1) the exposure of employees to asbestos is sporadic and of low intensity; (2) it is clear from the risk assessment that the exposure of any employee to asbestos will not exceed the control limit; and (3) the work involves (a) short, non-continuous maintenance activities; (b) removal of materials in which the asbestos fibres are firmly linked in a matrix; (c) encapsulation or sealing of asbestos-containing materials which are in good condition; or (d) air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos: reg 3(2). No exposure to asbestos will be sporadic and of low intensity within the meaning of reg 3(2)(a) if the concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method or by a method giving equivalent results to that method approved by the Health and Safety Executive exceeds or is liable to exceed the concentration approved in relation to a specified reference period for these purposes by the Health and Safety Executive: reg 3(3) (amended by SI 2008/960). As to the meaning of 'risk



assessment' see PARA 631 note 8. As to the meanings of 'control limit' and '1997 WHO recommended method' see PARA 631 note 3.

11 'Enforcing authority' means the Health and Safety Executive, local authority or Office of Rail Regulation, determined in accordance with the provisions of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, and the provisions of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557 (see PARAS 370, 372; **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195); Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).

12 The particulars specified in the Control of Asbestos Regulations 2006, SI 2006/2739, Sch 1. The following particulars are to be included in a notification made in accordance with reg 9(1), ie: (1) the name and address of the notifier and the address and telephone number of his usual place of business; (2) a brief description of (a) the type(s) of asbestos to be used or handled (classified in accordance with reg 2); (b) the maximum quantity of asbestos of each type to be held at any one time on the premises at which the work is to take place; (c) the activities and processes involved; (d) the number of workers involved; and (e) the measures taken to limit the exposure of employees to asbestos; and (3) the date of the commencement of the work and its expected duration: Sch 1.

13 Control of Asbestos Regulations 2006, SI 2006/2739, reg 9(1). As to exemption for the emergency services from reg 9 see note 3.

14 Control of Asbestos Regulations 2006, SI 2006/2739, reg 9(2).

15 See note 10.

16 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(1). As to exemption from reg 8 see PARA 630. For transitional provisions relating to existing licences and exemptions see reg 35.

17 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(2).

18 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(3).

19 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(4).

20 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(5).

21 Control of Asbestos Regulations 2006, SI 2006/2739, reg 8(6).

22 Control of Asbestos Regulations 2006, SI 2006/2739, reg 32(1).

23 Control of Asbestos Regulations 2006, SI 2006/2739, reg 32(4).

24 See the Approved Code of Practice and Guidance on Work with Materials Containing Asbestos (ACoP L143); and the Approved Code of Practice and Guidance on the Management of Asbestos in Non-domestic Premises (ACoP L127). As to codes of practice approved by the Health and Safety Executive see PARA 426.

25 At the date at which this title states the law, full details of published guidance and additional information were accessible on the Health and Safety Executive's internet site at [www.hse.gov.uk](http://www.hse.gov.uk). As to the status of such guidance see PARA 371.

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### **633. Information, instruction and training.**

Every employer<sup>1</sup> must ensure that adequate<sup>2</sup> information, instruction and training is given to those of his employees<sup>3</sup>:

- 1106 (1) who are or are liable to be exposed to asbestos<sup>4</sup>, or who supervise such employees, so that they are aware of:
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- 219. (a) the properties of asbestos and its effects on health, including its interaction with smoking;
- 220. (b) the types of products or materials likely to contain asbestos;
- 221. (c) the operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
- 222. (d) safe work practices, control measures, and protective equipment;
- 223. (e) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
- 224. (f) emergency procedures;
- 225. (g) hygiene requirements;
- 226. (h) decontamination procedures;
- 227. (i) waste handling procedures;
- 228. (j) medical examination<sup>5</sup> requirements; and
- 229. (k) the control limit<sup>6</sup> and the need for air monitoring,
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- 1107 in order to safeguard themselves and other employees; and
- 1108 (2) who carry out work in connection with the employer's duties under the relevant regulations<sup>7</sup>, so that they can carry out that work effectively<sup>8</sup>.

The information, instruction and training so required must be given at regular intervals<sup>9</sup>. It must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer<sup>10</sup> and must be provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment<sup>11</sup> and so that the employees are aware of the significant findings of the risk assessment and the results of any air monitoring carried out with an explanation of the findings<sup>12</sup>.

1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.

2 As to the meaning of 'adequate' see PARA 630 note 14.

3 As to an employer's duty to employees, and the exposure of the latter to asbestos, see PARA 631 notes 1-3.

4 As to the meaning of 'asbestos' see PARA 630 note 1.

5 'Medical examination' includes any laboratory tests and X-rays that a relevant doctor may require: Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1). 'Relevant doctor' means an appointed doctor or an employment medical adviser; 'appointed doctor' means a registered medical practitioner appointed for the time being in writing by the Health and Safety Executive for the purpose of the 2006 regulations; and 'employment medical adviser' means an employment medical adviser appointed under the Health and Safety at Work etc Act 1974 s 56 (see PARA 384): Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).

6 As to the meaning of 'control limit' see PARA 631 note 3.

7 lie under the Control of Asbestos at Work Regulations 2006, SI 2006/2739: see PARAS 630-632; the text and notes 1-6, 8-12; and PARAS 634-639.

8 Control of Asbestos Regulations 2006, SI 2006/2739, reg 10(1). As to the application of the 2006 regulations see PARA 630 note 4.

9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 10(2)(a).

10 Control of Asbestos Regulations 2006, SI 2006/2739, reg 10(2)(b).

11 As to the meaning of 'risk assessment' see PARA 631 note 8.

12 Control of Asbestos Regulations 2006, SI 2006/2739, reg 10(2)(c).

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**634. Prevention or reduction of exposure to asbestos and duty to prevent or reduce its spread.**

Every employer<sup>1</sup> must prevent the exposure of his employees to asbestos<sup>2</sup> so far as is reasonably practicable<sup>3</sup>. Where it is not reasonably practicable to prevent such exposure, he must:

- 1109 (1) take the measures necessary to reduce the exposure of his employees to asbestos to the lowest level reasonably practicable by measures other than the use of respiratory protective equipment; and
- 1110 (2) ensure that the number of his employees who are exposed to asbestos is as low as is reasonably practicable<sup>4</sup>.

Where it is not reasonably practicable for the employer to prevent the exposure of his employees to asbestos, the measures referred to in head (1) above must include, in order of priority:

- 1111 (a) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials in order to avoid or minimise the release of asbestos; and
- 1112 (b) the control of exposure at source, including adequate<sup>5</sup> ventilation systems and appropriate organisational measures,

and the employer must so far as is reasonably practicable provide the employees concerned with suitable respiratory protective equipment in addition to the measures required by heads (a) and (b) above<sup>6</sup>.

Where it is not reasonably practicable to reduce the exposure of an employee to below the control limit<sup>7</sup> by the measures referred to in head (1) above, then, in addition to taking those measures, the employer must provide that employee with suitable respiratory protective equipment which will reduce the concentration of asbestos in the air inhaled by the employee (after taking account of the effect of that respiratory protective equipment) to a concentration which is below the control limit and is as low as is reasonably practicable<sup>8</sup>.

The employer must:

- 1113 (i) ensure that no employee is exposed to asbestos in a concentration in the air inhaled by that worker which exceeds the control limit; or
- 1114 (ii) if the control limit is exceeded, (A) forthwith inform any employees concerned and their representatives and ensure that work does not continue in the affected area until adequate measures have been taken to reduce employees' exposure to asbestos to below the control limit; (B) as soon as is reasonably practicable identify the reasons for the control limit being exceeded and take the appropriate measures to prevent it being exceeded again; and (c) check the effectiveness of the measures taken pursuant to head (B) above by carrying out immediate air monitoring<sup>9</sup>.

Every employer must prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable, the spread of asbestos from any place where work under his control is carried out<sup>10</sup>.

- 1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.
- 2 As to an employer's duty to employees, and the exposure of the latter to asbestos, see PARA 631 notes 1-3. As to the meaning of 'asbestos' see PARA 630 note 1.
- 3 Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(1)(a). As to what is reasonably practicable see PARA 417. As to the application of the 2006 regulations see PARA 630 note 4.
- 4 Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(1)(b).
- 5 As to the meaning of 'adequate' see PARA 630 note 14.
- 6 Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(2).
- 7 As to the meaning of 'control limit' see PARA 631 note 3.
- 8 Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(3). Personal protective equipment provided by an employer in accordance with this requirement or reg 14(1) (see PARA 635) must be suitable for the purpose and must (1) comply with any provision of the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARA 567) which is applicable to that item of personal protective equipment; or (2) in the case of respiratory protective equipment, where no provision referred to in head (1) above applies, be of a type approved or must conform to a standard approved, in either case, by the Health and Safety Executive: Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(4). As to the meaning of 'personal protective equipment' see PARA 631 note 11; and as to the Health and Safety Executive see PARA 361 et seq.
- 9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 11(5).
- 10 Control of Asbestos Regulations 2006, SI 2006/2739, reg 16.

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### **635. Control measures etc.**

Every employer<sup>1</sup> who provides any control measure<sup>2</sup>, other thing or facility pursuant to the relevant regulations<sup>3</sup> must take all reasonable steps<sup>4</sup> to ensure that it is properly used or applied as the case may be<sup>5</sup>.

Every employee<sup>6</sup> must make full and proper use of any control measure, other thing or facility so provided and, where relevant, must take all reasonable steps to ensure that it is returned after use to any accommodation provided for it and if he discovers a defect in it report it forthwith to his employer<sup>7</sup>.

Every employer who provides any control measure to meet the requirements of the relevant regulations must ensure that, in the case of plant and equipment, including engineering controls and personal protective equipment<sup>8</sup>, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition and, in the case of provision of systems of work and supervision and of any other measure, it is reviewed at suitable intervals and revised if necessary<sup>9</sup>. Where exhaust ventilation equipment or respiratory protective equipment, except disposable respiratory protective equipment, is provided to meet the requirements of those regulations, the employer must ensure that thorough examinations and tests of that equipment are carried out at suitable intervals by a competent person<sup>10</sup>. Every employer must keep a suitable record of the examinations and tests so carried out and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary of it must be kept available for at least five years from the date on which it was made<sup>11</sup>.

Every employer must provide adequate<sup>12</sup> and suitable protective clothing for such of his employees as are exposed or are liable to be exposed to asbestos<sup>13</sup>, unless no significant quantity of asbestos is liable to be deposited on the clothes of the employee while he is at work<sup>14</sup>. The employer must ensure that protective clothing so provided is either disposed of as asbestos waste or adequately cleaned<sup>15</sup> at suitable intervals<sup>16</sup>. He must also ensure that protective clothing which has been used and is to be removed from the premises, whether for cleaning, further use or disposal, is packed, before being removed, in a suitable receptacle which must be labelled<sup>17</sup> as if it were a product containing asbestos or, in the case of protective clothing intended for disposal as waste, in accordance with the relevant requirements<sup>18</sup> for waste containing asbestos<sup>19</sup>. Where, as a result of the failure or improper use of the protective clothing provided, a significant quantity of asbestos is deposited on the personal clothing of an employee, then for the above purposes<sup>20</sup> that personal clothing must be treated as if it were protective clothing<sup>21</sup>.

Every employer who undertakes work which exposes or is liable to expose his employees to asbestos must ensure that:

1115 (1) the premises, or those parts of premises where that work is carried out, and the plant used in connection with that work are kept in a clean state; and

1116 (2) where such work has been completed, the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned<sup>22</sup>.

Every employer must ensure that any area in which work under his control is carried out is designated as:

- 1117 (a) an asbestos area where any employee would be liable to be exposed to asbestos in that area<sup>23</sup>;
- 1118 (b) a respirator zone where the concentration of asbestos fibres in the air in that area would exceed or would be liable to exceed the control limit<sup>24</sup>.

Asbestos areas and respirator zones must be clearly and separately demarcated and identified by notices indicating:

- 1119 (i) that the area is an asbestos area or a respirator zone or both, as the case may be; and
- 1120 (ii) in the case of a respirator zone, that the exposure of an employee who enters it is liable to exceed the control limit and that respiratory protective equipment must be worn<sup>25</sup>.

The employer may not permit any employee, other than an employee who by reason of his work is required to be in an area designated as an asbestos area or a respirator zone, to enter or remain in any such area and only employees who are so permitted may enter or remain in any such area<sup>26</sup>. Every employer must ensure that only competent employees<sup>27</sup> may enter a respirator zone and supervise any employees who enter a respirator zone<sup>28</sup>. Every employer must ensure that his employees do not eat, drink or smoke in an area designated as an asbestos area or a respirator zone and that arrangements are made for such employees to eat or drink in some other place<sup>29</sup>.

Subject to certain exceptions<sup>30</sup>, every employer must monitor the exposure of his employees to asbestos by measurement of asbestos fibres present in the air at regular intervals and when a change occurs which may affect that exposure<sup>31</sup>. The employer must keep a suitable record of monitoring so carried out or, where he decides that monitoring is not required<sup>32</sup>, the reason for that decision<sup>33</sup>. The record so required, or a suitable summary of it, must be kept, in a case where exposure is such that a health record is required to be kept<sup>34</sup>, for at least 40 years from the date of the last entry made in it; and in any other case, for at least five years from the date of that entry<sup>35</sup>. In relation to the record so required, the employer must:

- 1121 (A) on reasonable notice being given, allow an employee access to his personal monitoring record;
- 1122 (B) provide the Health and Safety Executive<sup>36</sup> with copies of such monitoring records as the Executive may require; and
- 1123 (C) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all monitoring records kept by him<sup>37</sup>.

Every employer must ensure that, for any of his employees who is exposed or liable to be exposed to asbestos, there are provided:

- 1124 (aa) adequate washing and changing facilities;
- 1125 (bb) where he is required to provide protective clothing, adequate facilities for the storage of that protective clothing and personal clothing not worn during working hours; and
- 1126 (cc) where he is required to provide respiratory protective equipment, adequate facilities for the storage of that equipment<sup>38</sup>.

The facilities so provided for the storage of personal protective clothing, personal clothing not worn during working hours and respiratory protective equipment must be separate from each other<sup>39</sup>.

- 1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.
- 2 As to the meaning of 'control measure' see PARA 631 note 11.
- 3 le pursuant to the Control of Asbestos at Work Regulations 2006, SI 2006/2739: see PARAS 630-634, 636-639.
- 4 As to what are reasonable steps see PARA 417.
- 5 Control of Asbestos Regulations 2006, SI 2006/2739, reg 12(1). As to the application of the 2006 regulations see PARA 630 note 4.
- 6 As to the meaning of 'employee' see PARA 302 note 4. As to an employer's duty to employees see PARA 631 notes 1-2.
- 7 Control of Asbestos Regulations 2006, SI 2006/2739, reg 12(2).
- 8 As to the meaning of 'personal protective equipment' see PARA 631 note 11.
- 9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 13(1).
- 10 Control of Asbestos Regulations 2006, SI 2006/2739, reg 13(2). Every employer who analyses a sample of any material to determine whether it contains asbestos must ensure that he meets criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results: reg 21(1). Every employer who requests a person to analyse a sample of any material to determine whether it contains asbestos must ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025: reg 21(2). Regulation 21(1), (2) does not apply to work carried out in a laboratory for the purposes only of research: reg 21(3). 'ISO 17025' means European Standard EN ISO/IEC 17025, 'General requirements for the competence of testing and calibration laboratories' as revised or reissued from time to time and accepted by the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC): Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).
- 11 Control of Asbestos Regulations 2006, SI 2006/2739, reg 13(3).
- 12 As to the meaning of 'adequate' see PARA 630 note 14.
- 13 As to exposure to asbestos see PARA 631 note 3; and as to the meaning of 'asbestos' see PARA 630 note 1.
- 14 Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(1).
- 15 The cleaning so required must be carried out either on the premises where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning, or in a suitably equipped laundry: Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(3).
- 16 Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(2).
- 17 le in accordance with the provisions of the Control of Asbestos Regulations 2006, SI 2006/2739, Sch 2: see PARA 638.
- 18 le in accordance with the provisions of the Control of Asbestos Regulations 2006, SI 2006/2739, reg 24(3): see PARA 638.
- 19 Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(4).
- 20 le for the purposes of the Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(2)-(4).
- 21 Control of Asbestos Regulations 2006, SI 2006/2739, reg 14(5).
- 22 Control of Asbestos Regulations 2006, SI 2006/2739, reg 17. Every employer who requests a person to assess whether premises or parts of premises where work with asbestos has been carried out have been



thoroughly cleaned upon completion of that work and are suitable for reoccupation such that a site clearance certificate for reoccupation can be issued must ensure that that person is accredited by an appropriate body as competent to perform work in compliance with the paragraphs of ISO 17020 and ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results: Control of Asbestos Regulations 2006, SI 2006/2739, reg 20(4) (which came into force on 6 April 2007: see reg 1). For these purposes, 'site clearance certificate for reoccupation' means a certificate issued to confirm that premises or parts of premises where work with asbestos has been carried out have been thoroughly cleaned upon completion of that work in accordance with reg 17(b): reg 20(1). 'ISO 17020' means European Standard EN ISO/IEC 17020, 'General criteria for the operation of various types of bodies performing inspection' as revised or reissued from time to time and accepted by the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC): Control of Asbestos Regulations 2006, SI 2006/2739, reg 2(1).

Regulation 17, in so far as it requires an employer to ensure that premises are thoroughly cleaned, does not apply (1) to a fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004 s 1, in respect of premises attended by its employees for the purpose of fighting a fire or in an emergency; or (2) to the employer of persons who attend a ship in dock premises for the purpose of fighting a fire or in an emergency, in respect of any ship so attended, and for these purposes 'ship' includes all vessels and hovercraft which operate on water or land and water, and 'dock premises' means a dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities: Control of Asbestos Regulations 2006, SI 2006/2739, reg 3(5).

23 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(1)(a). This is subject to reg 3(2) (see PARA 632 note 10): reg 18(1)(a).

24 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(1)(b). As to the meaning of 'control limit' see PARA 631 note 3.

25 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(2).

26 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(3).

27 For these purposes a competent employee means an employee who has received adequate information, instruction and training: Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(4). As to the meaning of 'adequate' see PARA 630 note 14.

28 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(4).

29 Control of Asbestos Regulations 2006, SI 2006/2739, reg 18(5).

30 The Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(1) does not apply where (1) the exposure of an employee is not liable to exceed the control limit; or (2) the employer is able to demonstrate by another method of evaluation that the requirements of reg 11(1) and (5) (see PARA 634) have been complied with: reg 19(2).

31 Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(1). Every employer who carries out any measurement of the concentration of asbestos fibres present in the air must ensure that he meets criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results: reg 20(2). Every employer who requests a person to carry out any measurement of the concentration of asbestos fibres present in the air must ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025: reg 20(2). Regulation 20(2), (3) does not apply to work carried out in a laboratory for the purposes only of research: reg 20(5).

32 Ie because the Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(2)(b) applies: see note 30 head (2).

33 Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(3).

34 Ie under the Control of Asbestos Regulations 2006, SI 2006/2739, reg 22: see PARA 636.

35 Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(4).

36 As to the Health and Safety Executive see PARA 361 et seq.

37 Control of Asbestos Regulations 2006, SI 2006/2739, reg 19(5).

38 Control of Asbestos Regulations 2006, SI 2006/2739, reg 23(1).

39 Control of Asbestos Regulations 2006, SI 2006/2739, reg 23(2).

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### **636. Health records and medical surveillance.**

Every employer<sup>1</sup> must ensure that:

- 1127 (1) a health record, containing particulars approved<sup>2</sup> by the Health and Safety Executive<sup>3</sup>, relating to each of his employees who is exposed to asbestos<sup>4</sup> is maintained; and
- 1128 (2) that record or a copy of it is kept available in a suitable form for at least 40 years from the date of the last entry made in it<sup>5</sup>.

Every employer must also ensure that each of his employees who is exposed to asbestos is under adequate<sup>6</sup> medical surveillance by a relevant doctor<sup>7</sup>. The medical surveillance so required must include:

- 1129 (a) a medical examination<sup>8</sup> not more than two years before the beginning of such exposure; and
- 1130 (b) periodic medical examinations at intervals of not more than two years or such shorter time as the relevant doctor may require while such exposure continues,

and each such medical examination must include a specific examination of the chest<sup>9</sup>. Where an employee has been examined in accordance with these requirements, the relevant doctor must issue a certificate to the employer and employee stating that the employee has been so examined and the date of the examination, and the employer must keep that certificate or a copy of it for at least four years from the date on which it was issued<sup>10</sup>.

An employee to whom the above provisions apply must, when required by his employer and at the cost of the employer, present himself during his working hours for such examination and tests as may be required<sup>11</sup> and must furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require<sup>12</sup>.

Where, for the purpose of carrying out his functions under the relevant regulations<sup>13</sup>, a relevant doctor requires to inspect any record kept for the purposes of those regulations, the employer must permit him to do so<sup>14</sup>. Where medical surveillance is carried out on the premises of the employer, the employer must ensure that suitable facilities are made available for the purpose<sup>15</sup>.

The employer must:

- 1131 (i) on reasonable notice being given, allow an employee access to his personal health record;
- 1132 (ii) provide the Executive with copies of such personal health records as the Executive may require; and
- 1133 (iii) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all personal health records kept by him<sup>16</sup>.

Where, as a result of medical surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor to be the result of exposure to asbestos at work<sup>17</sup> the employer of that employee must:

- 1134 (A) ensure that a suitable person informs the employee accordingly and provides the employee with information and advice regarding further medical surveillance;
- 1135 (B) review the risk assessment<sup>18</sup>;
- 1136 (C) review any measure taken to comply with the statutory requirements to reduce or prevent exposure to asbestos<sup>19</sup>, taking into account any advice given by a relevant doctor or by the Executive;
- 1137 (D) consider assigning the employee to alternative work where there is no risk of further exposure to asbestos, taking into account any advice given by a relevant doctor; and
- 1138 (E) provide for a review of the health of every other employee who has been similarly exposed, including a medical examination, which must include a specific examination of the chest, where such an examination is recommended by a relevant doctor or by the Executive<sup>20</sup>.

1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.

2 As to the meaning of 'approved' see PARA 631 note 3.

3 As to the Health and Safety Executive see PARA 361 et seq.

4 As to an employer's duty to employees, and their exposure to asbestos, see PARA 631 notes 1-3. As to the meaning of 'asbestos' see PARA 630 note 1.

5 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(1). This is subject to reg 3(2) (see PARA 632 note 10): reg 22(1). As to the application of the 2006 regulations see PARA 630 note 4.

6 As to the meaning of 'adequate' see PARA 630 note 14.

7 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(2). This is subject to reg 3(2) (see PARA 632 note 10): reg 22(2). As to the meaning of 'relevant doctor' see PARA 633 note 5.

8 As to the meaning of 'medical examination' see PARA 633 note 5.

9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(3).

10 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(4).

11 Ie for the purposes of the Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(3).

12 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(5).

13 Ie under the Control of Asbestos Regulations 2006, SI 2006/2739: see PARAS 630-635, 637-639.

14 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(6).

15 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(7).

16 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(8).

17 As to notification of mesothelioma and other diseases caused by exposure to asbestos see PARA 405.

18 As to the meaning of 'risk assessment' see PARA 631 note 8.

19 Ie in order to comply with the Control of Asbestos Regulations 2006, SI 2006/2739, reg 11: see PARA 634.

20 Control of Asbestos Regulations 2006, SI 2006/2739, reg 22(9).



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**637. Arrangements to deal with accidents, incidents and emergencies.**

Subject to certain exceptions<sup>1</sup>, and without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations 1999<sup>2</sup>, in order to protect the health of his employees<sup>3</sup> from an accident, incident or emergency related to the use of asbestos<sup>4</sup> in a work process or to the removal or repair of asbestos-containing materials at the workplace, the employer<sup>5</sup> must ensure that:

- 1139 (1) procedures, including the provision of relevant safety drills, which must be tested at regular intervals, have been prepared which can be put into effect when such an event occurs;
- 1140 (2) information on emergency arrangements, including details of relevant work hazards and hazard identification arrangements, and specific hazards likely to arise at the time of an accident, incident or emergency, is available; and
- 1141 (3) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs<sup>6</sup>.

The employer must ensure that information on the procedure and systems required by heads (1) and (3) above and the information required by head (2) above is:

- 1142 (a) made available to relevant accident and emergency services<sup>7</sup> to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures; and
- 1143 (b) displayed at the workplace, if this is appropriate<sup>8</sup>.

In the event of an accident, incident or emergency related to the unplanned release of asbestos at the workplace, the employer must ensure that:

- 1144 (i) immediate steps are taken to mitigate the effects of the event, restore the situation to normal and inform any person who may be affected; and
- 1145 (ii) only those persons who are responsible for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with appropriate respiratory protective equipment and protective clothing and any necessary specialised safety equipment and plant, which must be used until the situation is restored to normal<sup>9</sup>.

<sup>1</sup> ie subject to the Control of Asbestos Regulations 2006, SI 2006/2739, reg 3(2) (see PARA 632 note 10) and reg 15(3). Regulation 15(1) (see the text and notes 2-6) does not apply where (1) the results of the risk assessment show that, because of the quantity of asbestos present at the workplace, there is only a slight risk to the health of employees; and (2) the measures taken by the employer to comply with the duty under reg 11(1) (see PARA 634) are sufficient to control that risk: reg 15(3). As to the meaning of 'risk assessment' see PARA 631 note 8; and as to the meaning of 'asbestos' see PARA 630 note 1.

<sup>2</sup> ie the provisions of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 429 et seq.

- 3 As to the employer's duty to employees see PARA 631 notes 1-2.
- 4 As to exposure to asbestos see PARA 631 note 3.
- 5 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.
- 6 Control of Asbestos Regulations 2006, SI 2006/2739, reg 15(1). As to the application of the 2006 regulations see PARA 630 note 4.
- 7 As to the meaning of 'emergency services' see PARA 630 note 14.
- 8 Control of Asbestos Regulations 2006, SI 2006/2739, reg 15(2).
- 9 Control of Asbestos Regulations 2006, SI 2006/2739, reg 15(4). As to the duty to report the release of a substance in a quantity sufficient to cause death, major injury or damage to health see also the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 21; and PARA 400.

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### 638. Storage, distribution and labelling.

Every employer<sup>1</sup> who undertakes work with asbestos<sup>2</sup> must ensure that raw asbestos or waste which contains asbestos is not stored, received into or dispatched from any place of work or distributed within any place of work, except in a totally enclosed distribution system, unless it is in a sealed receptacle or, where more appropriate, sealed wrapping, clearly marked in accordance with the prescribed requirements<sup>3</sup> showing that it contains asbestos<sup>4</sup>.

Subject to the following provision, a person may not supply<sup>5</sup> a product which contains asbestos, being an article or substance for use at work, unless that product is labelled in accordance with the relevant provisions<sup>6</sup>. Where, however, a component of a product contains asbestos, it is sufficient compliance with this requirement if that component is labelled in accordance with the relevant provisions except that where the size of that component makes it impossible for a label to be fixed to it neither that component nor the product need be labelled<sup>7</sup>.

1 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.

2 As to the meaning of 'asbestos' see PARA 630 note 1.

3 In accordance with the Control of Asbestos Regulations 2006, SI 2006/2739, reg 24(2), (3): see note 4.

4 Control of Asbestos Regulations 2006, SI 2006/2739, reg 24(1). As to the application of the 2006 regulations see PARA 630 note 4.

Raw asbestos must be labelled in accordance with the provision of Sch 2: reg 24(2). Subject to Sch 2 para 1(2), (3), the label to be used on (1) raw asbestos, together with the labelling required under the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716 (see PARA 572), and the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348) (see PARAS 555-557; and **CARRIAGE AND CARRIERS**); (2) asbestos waste, when required to be so labelled by the Control of Asbestos Regulations 2006, SI 2006/2739, reg 24(3); and (3) products containing asbestos, including used protective clothing to which reg 14(2) applies (see PARA 635), must be in the form and in the colours of the diagram set out in Sch 2 para 1(1) and must comply with the specifications set out in Sch 2 paras 2 and 3: Sch 2 para 1(1) (amended by SI 2007/1573 and SI 2009/716). In the case of a product containing crocidolite, the words 'contains asbestos' shown in the diagram must be replaced by the words 'contains crocidolite/blue asbestos': Control of Asbestos Regulations 2006, SI 2006/2739, Sch 2 para 1(2). Where the label is printed directly onto a product, a single colour contrasting with the background colour may be used: Sch 2 para 1(3). The dimensions in millimetres of the label referred to in Sch 2 para 1(1) must be those shown on the diagram in that paragraph, except that larger measurements may be used, but in that case the dimension indicated as h on the diagram must be 40% of the dimension indicated as H: Sch 2 para 2. The label must be clearly and indelibly printed so that the words in the lower half of the label can be easily read, and those words must be printed in black or white: Sch 2 para 3. Where a product containing asbestos may undergo processing or finishing it must bear a label containing safety instructions appropriate to the particular product and in particular the following instructions: (a) 'operate if possible out of doors [or] in a well ventilated place'; (b) 'preferably use hand tools or low speed tools equipped, if necessary, with an appropriate dust extraction facility. If high speed tools are used, they should always be so equipped'; (c) 'if possible, dampen before cutting or drilling'; and (d) 'dampen dust, place it in a properly closed receptacle and dispose of it safely': Sch 2 para 4(1). Additional safety information given on a label must not detract from or contradict the safety information given in accordance with Sch 2 para 4(1): Sch 2 para 4(2).

Labelling of packaged and unpackaged products containing asbestos in accordance with the above provisions must be effected by means of (i) an adhesive label firmly affixed to the product or its packaging, as the case may be; (ii) a tie-on label firmly attached to the product or its packaging, as the case may be; or (iii) direct printing onto the product or its packaging, as the case may be: Sch 2 para 5(1). Where, in the case of an



unpackaged product containing asbestos, it is not reasonably practicable to comply with the provisions of Sch 2 para 5(1), the label must be printed on a suitable sheet accompanying the product: Sch 2 para 5(2). Labelling of raw asbestos and asbestos waste must be effected in accordance with head (i) or head (iii) above: Sch 2 para 5(3). For the purposes of Sch 2 but subject to Sch 2 para 5(5), a product supplied in loose plastic or other similar wrapping (including plastic and paper bags) but no other packaging, is to be treated as being supplied in a package whether the product is placed in such wrapping at the time of its supply or was already so wrapped previously: Sch 2 para 5(4). No wrapping in which a product is placed at the time of its supply is to be regarded as packaging if any product contained in it is labelled in accordance with the requirements of Sch 2 or any other packaging in which that product is contained is so labelled: Sch 2 para 5(5).

Waste containing asbestos must be labelled (A) where the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348), apply, in accordance with those regulations (see PARAS 555-557; and **CARRIAGE AND CARRIERS**); and (B) in any other case, in accordance with the provisions of the Control of Asbestos Regulations 2006, SI 2006/2739, Sch 2: reg 24(3) (amended by SI 2007/1573).

5     le under an exception in the Control of Asbestos Regulations 2006, SI 2006/2739, Sch 3 (see PARA 639 note 7) or an exemption granted pursuant to reg 32 (see PARA 630) or reg 33 (see PARA 639 note 1). For these purposes, 'supply' means supply by way of sale, lease, hire, hire-purchase, loan, gift or exchange for a consideration other than money, whether (in all cases) as principal or as agent for another: reg 25(1).

6     Control of Asbestos Regulations 2006, SI 2006/2739, reg 30(1). The statutory provisions referred to in the text are the provisions of Sch 2: see note 4.

7     Control of Asbestos Regulations 2006, SI 2006/2739, reg 30(2).

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### 639. Prohibitions on exposure to asbestos.

The following prohibitions apply only to acts done in the course of a trade, business or other undertaking (whether for profit or not) carried on by a person<sup>1</sup>. No person may undertake asbestos spraying<sup>2</sup> or working procedures that involve using low-density<sup>3</sup> insulating or soundproofing materials which contain asbestos<sup>4</sup>. Every employer<sup>5</sup> must ensure that no employees are exposed to asbestos during the extraction of asbestos<sup>6</sup>. Every employer must ensure that no employees are exposed to asbestos during the manufacture of asbestos products or of products containing intentionally added asbestos<sup>7</sup>.

1 Control of Asbestos Regulations 2006, SI 2006/2739, reg 25(2). As to the application of the 2006 regulations see PARA 630 note 4. The Secretary of State for Defence may, in the interests of national security, exempt any person or class of persons from the prohibitions imposed by Pt 3 (regs 25-31) by a certificate in writing, and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time: reg 33. Other exceptions are provided by Sch 3 (see note 7). Where under an exception in Sch 3 or an exemption granted pursuant to reg 33 asbestos is used in a work process or is produced by a work process, the employer must ensure that the quantity of asbestos and materials containing asbestos at the premises where the work is carried out is reduced to as low a level as is reasonably practicable: reg 31(1). Where under an exception in Sch 3 or an exemption granted pursuant to reg 33 a manufacturing process which gives rise to asbestos dust is carried out in a building, the employer must ensure that any part of the building in which the process is carried out is (1) so designed and constructed as to facilitate cleaning; and (2) equipped with an adequate and suitable vacuum cleaning system which must, where reasonably practicable, be a fixed system: reg 31(2). Head (1) above does not apply, however, to a building in which, prior to 1 March 1988, there was carried out a process to which either (a) as then in force, the Asbestos Regulations 1969, SI 1969/690, reg 13 (revoked) applied and the process was carried out in compliance with that regulation; or (b) that regulation did not apply: Control of Asbestos Regulations 2006, SI 2006/2739, reg 31(3).

2 'Asbestos spraying' means the application by spraying of any material containing asbestos to form a continuous surface coating: Control of Asbestos Regulations 2006, SI 2006/2739, reg 25(1). As to the meaning of 'asbestos' see PARA 630 note 1.

3 ie less than 1g/cm<sup>3</sup>.

4 Control of Asbestos Regulations 2006, SI 2006/2739, reg 26(1).

5 As to the duties of self-employed persons under the provisions set out in the text see PARA 631 note 1.

6 Control of Asbestos Regulations 2006, SI 2006/2739, reg 26(2). 'Extraction of asbestos' means the extraction by mining or otherwise of asbestos as the primary product of such extraction, but does not include extraction which produces asbestos as a by-product of the primary activity of extraction: reg 25(1).

7 Control of Asbestos Regulations 2006, SI 2006/2739, reg 26(3). Where in Pt 3 it is stated that asbestos has intentionally been added to a product or is intentionally added, it will be presumed where (1) asbestos is present in any product; and (2) asbestos is not a naturally occurring impurity of that product, or of any component or constituent thereof, that the asbestos has intentionally been added or is intentionally added, as the case may be, subject to evidence to the contrary being adduced in any proceedings: reg 25(4). In the case of chrysotile only, the prohibition in reg 26(3) is subject to the exception in Sch 3 para 2: reg 26(4). Where it is not practicable for an employer to substitute for chrysotile a substance which, under the conditions of its use, does not create a risk to the health of his employees or creates a lesser risk than that created by chrysotile, reg 26(3) does not apply to (a) diaphragms for use in electrolytic cells in existing electrolysis plants for chlor-alkali manufacture; (b) chrysotile, or products to which chrysotile has intentionally been added, required solely for the manufacture of the products described in head (a) above: Sch 3 para 2. See also note 1.



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## (B) MESOTHELIOMA

### **640. Mesothelioma: damages.**

Where:

- 1146 (1) a person (the 'responsible person') has negligently or in breach of statutory duty<sup>1</sup> caused or permitted another person (the 'victim') to be exposed to asbestos<sup>2</sup>;
- 1147 (2) the victim has contracted mesothelioma as a result of exposure to asbestos;
- 1148 (3) because of the nature of mesothelioma and the state of medical science, it is not possible to determine with certainty whether it was the aforementioned exposure or another exposure which caused the victim to become ill; and
- 1149 (4) the responsible person is liable in tort, by virtue of the aforementioned exposure, in connection with damage caused to the victim by the disease, whether by reason of having materially increased a risk or for any other reason<sup>3</sup>,

the responsible person is liable in respect of the whole of the damage caused to the victim by the disease, irrespective of whether the victim was also exposed to asbestos other than by the responsible person, whether or not in circumstances in which another person has liability in tort, or by the responsible person in circumstances in which he has no liability in tort, and jointly and severally with any other responsible person<sup>4</sup>. This does not prevent one responsible person from claiming a contribution from another, or a finding of contributory negligence<sup>5</sup>.

1 An apology, an offer of treatment or other redress, does not of itself amount to an admission of negligence or breach of statutory duty: Compensation Act 2006 s 2.

2 Ie including failing to protect a person from exposure to asbestos: Compensation Act 2006 s 3(5).

3 Compensation Act 2006 s 3(1).

4 Compensation Act 2006 s 3(2).

5 Compensation Act 2006 s 3(3). In determining the extent of contributions of different responsible persons, a court must have regard to the relative lengths of the periods of exposure for which each was responsible; but not if or to the extent that responsible persons agree to apportion responsibility among themselves on some other basis, or if or to the extent that the court thinks that another basis for determining contributions is more appropriate in the circumstances of a particular case: s 3(4). The Treasury may make regulations about the provision of compensation to a responsible person where he claims, or would claim, a contribution from another responsible person, but he is unable or likely to be unable to obtain the contribution, because an insurer of the other responsible person is unable or likely to be unable to satisfy the claim for a contribution: s 3(7). The regulations may, in particular (1) replicate or apply (with or without modification) a provision of the Financial Services Compensation Scheme; (2) replicate or apply (with or without modification) a transitional compensation provision; (3) provide for a specified person to assess and pay compensation; (4) provide for expenses incurred (including the payment of compensation) to be met out of levies collected in accordance with the Financial Services and Markets Act 2000 s 213(3)(b) (the Financial Services Compensation Scheme); (5) modify the effect of a transitional compensation provision; (6) enable the Financial Services Authority to amend the Financial Services Compensation Scheme; (7) modify the Financial Services and Markets Act 2000 in its application to an amendment pursuant to head (6) above; (8) make, or require the making of, provision for the making of a claim by a responsible person for compensation whether or not he has already satisfied claims in tort against him; (9) make, or require the making of, provision which has effect in relation to claims for

contributions made on or after 25 July 2006 (ie the date on which the Compensation Act 2006 was passed): s 3(8). Provision made by virtue of head (1) above ceases to have effect when the Financial Services Compensation Scheme is amended by the Financial Services Authority by virtue of head (6) above: s 3(9). For these purposes, a reference to a responsible person includes a reference to an insurer of a responsible person, and 'transitional compensation provision' means a provision of an enactment which is made under the Financial Services and Markets Act 2000 and (a) preserves the effect of the Policyholders Protection Act 1975; or (b) applies the Financial Services Compensation Scheme in relation to matters arising before its establishment: Compensation Act 2006 s 3(10). Regulations under s 3(7) (i) may include consequential or incidental provision; (ii) may make provision which has effect generally or only in relation to specified cases or circumstances; (iii) may make different provision for different cases or circumstances; (iv) must be made by statutory instrument; and (v) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 3(11). For regulations made under these provisions see the Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006, SI 2006/3259, which amend the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001, SI 2001/2967 (the 'FSCS Transitional Order') and provide the Financial Services Authority ('FSA') with an additional power to make rules for the Financial Services Compensation Scheme ('FSCS'). As to the FSCS see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 583 et seq.

## **UPDATE**

### **640 Mesothelioma: damages**

NOTES 3, 4--It is not open to defendant to put claimant to proof of causation by reference to twofold increase in risk, but rather, it is sufficient to show material, more than minimal, increase in risk: *Sienkiewicz v Greif (UK) Ltd* [2009] EWCA Civ 1159, [2010] 2 WLR 951, [2009] All ER (D) 84 (Nov) (tortious exposure to asbestos had materially increased the risk of suffering from mesothelioma).

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## **D. LEAD AND LEAD PROCESSES**

### **641. Prohibited uses and activities.**

No employer<sup>1</sup> may use a glaze<sup>2</sup> other than a leadless glaze<sup>3</sup> or a low solubility glaze<sup>4</sup> in the manufacture of pottery<sup>5</sup>.

No employer may employ a young person<sup>6</sup> or a woman of reproductive capacity<sup>7</sup> in any of the following activities<sup>8</sup>:

- 1150 (1) in lead smelting and refining processes:
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- 230. (a) work involving the handling, treatment, sintering, smelting or refining of ores or materials containing not less than 5 per cent lead; and
- 231. (b) the cleaning of any place where any of the above processes are carried out<sup>9</sup>;
- 140
- 1151 (2) in lead-acid battery manufacturing processes:
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- 232. (a) the manipulation of lead oxides<sup>10</sup>;
- 233. (b) mixing or pasting in connection with the manufacture or repair of lead-acid batteries;
- 234. (c) the melting or casting of lead;
- 235. (d) the trimming, abrading or cutting of pasted plates in connection with the manufacture or repair of lead-acid batteries; and
- 236. (e) the cleaning of any place where any of the above processes are carried out<sup>11</sup>.
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The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons from all or any of the above prohibitions or from the requirements or prohibitions imposed by certain other of the relevant regulations<sup>12</sup> and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>13</sup>. The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case and, in particular, to the conditions, if any, which it proposes to attach to the exemption and to any requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>14</sup>.

The relevant regulations are supported by an approved code of practice<sup>15</sup>.

1 The Control of Lead at Work Regulations 2002, SI 2002/2676, apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee, except that reg 9 (air monitoring: see PARA 643) does not apply to a self-employed person: reg 3(2). The duties imposed by those regulations not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master and are not liable to expose persons other than the master and crew to a risk to their health and safety, and for these purposes 'ship' includes every description of vessel used in navigation,

other than a ship forming part of Her Majesty's Navy: reg 3(3) (substituted by SI 2004/3386). As to the meanings of 'employee' and 'self-employed person' see PARA 302 notes 4-5.

Where a duty is placed by the 2002 regulations on an employer in respect of his employees (see PARA 642 et seq), he is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried out by the employer except that the duties of the employer (1) under reg 10 (medical surveillance: see PARA 644) do not extend to persons who are not his employees other than employees of another employer who are working under the direction of the first-mentioned employer; and (2) under regs 9, 11(1), (2) and 12 (which relate respectively to monitoring, information and training and dealing with accidents: see PARAS 643, 645-646) do not extend to persons who are not his employees, unless those persons are on the premises where the work is being carried out: reg 3(1).

The 2002 regulations apply to and in relation to any activity outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as those provisions apply within Great Britain: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 14. As to the meaning of 'Great Britain' see PARA 305 note 7.

2 'Glaze' does not include engobe or slip: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

3 'Leadless glaze' means a glaze which contains less than 0.5% lead by weight of the element lead calculated with reference to the total weight of the preparation; and 'lead' means lead, including lead alkyls (ie tetraethyl lead or tetramethyl lead), lead alloys, any compounds of lead and lead as a constituent of any substance or material, which is liable to be inhaled, ingested or otherwise absorbed by persons except where it is given off from the exhaust system of a vehicle on a road within the meaning of the Road Traffic Act 1988 s 192 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 209): Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

4 'Low solubility glaze' means a glaze which does not yield to dilute hydrochloric acid more than 5% of its dry weight of a soluble lead compound when determined in accordance with a method approved by the Health and Safety Executive; and 'approved' means approved for the time being in writing: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1) (amended by SI 2008/960). As to the Health and Safety Executive see PARA 361 et seq.

5 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 4(1).

6 'Young person' means a person who has not attained the age of 18 and who is not a woman of reproductive capacity: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

7 'Woman of reproductive capacity' means an employee in respect of whom an entry has been made to that effect in that employee's health record in accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(14) (see PARA 644) by a relevant doctor; 'relevant doctor' means an appointed doctor or an employment medical adviser appointed under the Health and Safety at Work etc Act 1974 s 56 (see PARA 386); and 'appointed doctor' means a registered medical practitioner appointed for the time being in writing by the Health and Safety Executive for the purpose of the 2002 regulations: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

8 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 4(2).

9 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 4(2), Sch 1 para 1.

10 For these purposes, 'lead oxides' means powdered lead oxides in the form of lead, lead monoxide, lead dioxide, red lead or any combination of lead used in oxide manufacture or lead-acid battery pasting processes: Control of Lead at Work Regulations 2002, SI 2002/2676, Sch 1 para 3.

11 Control of Lead at Work Regulations 2002, SI 2002/2676, Sch 1 para 2.

12 Ie imposed by the Control of Lead at Work Regulations 2002, SI 2002/2676, regs 7, 8, 9(2), (3) and 10(7), (11)-(15) (see PARAS 643-644): reg 13(1).

13 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 13(1).

14 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 13(2).

15 See the Approved Code of Practice and Guidance on the Control of Lead at Work (ACoP L132). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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#### **642. Assessment of the risk to health created by work involving lead.**

An employer<sup>1</sup> may not carry out work which is liable to expose any employees to lead<sup>2</sup> unless he has made a suitable and sufficient assessment of the risk<sup>3</sup> created by that work to the health of those employees and of the steps that need to be taken to meet the requirements of the relevant regulations<sup>4</sup> and has implemented those steps<sup>5</sup>. The risk assessment<sup>6</sup> must include consideration of:

- 1152 (1) the hazardous<sup>7</sup> properties of the lead;
- 1153 (2) information on health effects provided by the supplier, including information contained in any relevant safety data sheet<sup>8</sup>;
- 1154 (3) the level, type and duration of exposure;
- 1155 (4) the circumstances of the work, including the amount of lead involved;
- 1156 (5) activities, such as maintenance, where there is the potential for a high level of exposure;
- 1157 (6) any relevant occupational exposure limit<sup>9</sup>, action level<sup>10</sup> and suspension level<sup>11</sup>;
- 1158 (7) the effect of preventive and control measures which have been or will be taken<sup>12</sup>;
- 1159 (8) the results of relevant medical surveillance<sup>13</sup>;
- 1160 (9) the results of monitoring of exposure<sup>14</sup>;
- 1161 (10) in circumstances where the work will involve exposure to lead and another substance hazardous to health<sup>15</sup>, the risk presented by exposure to those substances in combination;
- 1162 (11) whether the exposure of any employee to lead is liable to be significant<sup>16</sup>; and
- 1163 (12) such additional information as the employer may need in order to complete the risk assessment<sup>17</sup>.

The risk assessment must be reviewed regularly and forthwith if:

- 1164 (a) there is reason to suspect that the risk assessment is no longer valid;
- 1165 (b) there has been a significant change in the work to which the risk assessment relates;
- 1166 (c) the results of any monitoring carried out<sup>18</sup> show it to be necessary; or
- 1167 (d) the blood-lead concentration of any employee under medical surveillance<sup>19</sup> equals or exceeds the action level,

and where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>20</sup>.

Where the employer employs five or more employees, he must record the significant findings of the risk assessment as soon as is practicable<sup>21</sup> after the risk assessment is made<sup>22</sup>. He must also record the steps which he has taken to meet the statutory requirements<sup>23</sup> to prevent or control exposure to lead<sup>24</sup>.



1 As to the application of the duties set out in the text to a self-employed person, and their application to work outside Great Britain, see PARA 641 note 1.

2 Any reference in the Control of Lead at Work Regulations 2002, SI 2002/2676, to either an employee being exposed to lead or any place being contaminated by lead, is a reference to exposure to or, as the case may be, contamination by lead arising out of or in connection with work at the workplace: reg 2(2). 'Workplace' means any premises or part of premises used for or in connection with work, and includes (1) any place within the premises to which an employee has access while at work; and (2) any room, lobby, corridor, staircase, road or other place (a) used as a means of access to or egress from that place of work; or (b) where facilities are provided for use in connection with that place of work, other than a public road; and 'public road' means, in England and Wales, a highway maintainable at the public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248): Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1). As to the meaning of 'lead' see PARA 641 note 3.

3 'Risk', in relation to the exposure of an employee to lead, means the likelihood that the potential for harm to the health of a person will be attained under the conditions of use and exposure and also the extent of that harm: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

4 le the requirements of the Control of Lead at Work Regulations 2002, SI 2002/2676: see PARA 641; the text and notes 5-24; and PARA 643 et seq.

5 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(1).

6 'Risk assessment' means the assessment of risk required by the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(1)(a): reg 2(1).

7 'Hazard' means the intrinsic property of lead which has the potential to cause harm to the health of a person, and 'hazardous' is to be construed accordingly: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

8 'Safety data sheet' means a safety data sheet within the meaning of European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1) (definition amended by SI 2009/716).

9 'Occupational exposure limit for lead' means in relation to (1) lead other than lead alkyls, a concentration of lead in the atmosphere to which any employee is exposed of 0.15 mg/m<sup>3</sup>; and (2) lead alkyls, a concentration of lead contained in lead alkyls in the atmosphere to which any employee is exposed of 0.10 mg/m<sup>3</sup>, assessed: (a) by reference to the content of the element lead in the concentration; and (b) in relation to an 8-hour time-weighted average reference period when calculated by a method approved by the Health and Safety Executive: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1) (amended by SI 2008/960). As to the meaning of 'lead alkyls' see PARA 641 note 3; and as to the meaning of 'approved' see PARA 641 note 4. As to the Health and Safety Executive see PARA 361 et seq.

10 'Action level' means a blood-lead concentration of (1) in respect of a woman of reproductive capacity, 25 µg/dl; (2) in respect of a young person, 40 µg/dl; or (3) in respect of any other employee, 50 µg/dl: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1). As to the meanings of 'young person' and 'woman of reproductive capacity' see PARA 641 notes 6-7.

11 'Suspension level' means (1) a blood-lead concentration of (a) in respect of a woman of reproductive capacity, 30 µg/dl; (b) in respect of a young person, 50 µg/dl; or (c) in respect of any other employee, 60 µg/dl; or (2) a urinary lead concentration of (a) in respect of a woman of reproductive capacity, 25 µg Pb/g creatinine; or (b) in respect of any other employee, 110 µg Pb/g creatinine: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

12 le in accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6: see PARA 643.

13 'Medical surveillance' means assessment of the state of health of an employee, as related to exposure to lead, and includes clinical assessment and biological monitoring; and 'biological monitoring' includes the measuring of a person's blood-lead concentration or urinary lead concentration by atomic absorption spectroscopy: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

14 le in accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9: see PARA 643.

15 For these purposes, 'substance hazardous to health' has the meaning assigned to it in the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1) (see PARA 620 note 3): Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

16 'Significant' in relation to exposure to lead means exposure in the following circumstances: (1) where any employee is or is liable to be exposed to a concentration of lead in the atmosphere exceeding half the occupational exposure limit for lead; (2) where there is a substantial risk of any employee ingesting lead; or (3) where there is a risk of contact between the skin and lead alkyls or other substances containing lead which can be absorbed through the skin: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

17 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(2).

18 See note 14.

19 In accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10: see PARA 644.

20 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(3).

21 As to when is as soon as practicable see PARA 417.

22 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(4)(a).

23 In the requirements of the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6: see PARA 643.

24 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 5(4)(b).

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#### **643. Prevention or control of exposure to lead.**

Every employer<sup>1</sup> must ensure that the exposure of his employees to lead<sup>2</sup> is either prevented or, where this is not reasonably practicable<sup>3</sup>, adequately controlled<sup>4</sup>. In complying with this duty of prevention, substitution must by preference be undertaken, whereby the employer must avoid, so far as is reasonably practicable, the use of lead at the workplace<sup>5</sup> by replacing it with a substance or process which, under the conditions of its use, either eliminates or reduces the risk<sup>6</sup> to the health of his employees<sup>7</sup>. Where it is not reasonably practicable to prevent exposure to lead, the employer must comply with this duty of control by applying protection measures appropriate to the activity and consistent with the risk assessment<sup>8</sup>, including, in order of priority:

- 1168 (1) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials;
- 1169 (2) the control of exposure at source, including adequate ventilation systems and appropriate organisational measures; and
- 1170 (3) where adequate control of exposure cannot be achieved by other means, the provision of suitable personal protective equipment<sup>9</sup> in addition to the measures required by heads (1) and (2) above<sup>10</sup>.

The measures referred to above must include:

- 1171 (a) arrangements for the safe handling, storage and transport of lead, and of waste containing lead, at the workplace;
- 1172 (b) the adoption of suitable maintenance procedures;
- 1173 (c) reducing, to the minimum required for the work concerned, the number of employees subject to exposure, the level and duration of exposure, and the quantity of lead present at the workplace;
- 1174 (d) the control of the working environment, including appropriate general ventilation; and
- 1175 (e) appropriate hygiene measures including adequate washing facilities<sup>11</sup>.

Where, notwithstanding the control measures<sup>12</sup> so taken, the exposure of an employee to lead is, or is liable to be, significant<sup>13</sup>, the employer must provide that employee with suitable and sufficient protective clothing<sup>14</sup>.

Every employer who provides any control measure, other thing or facility in accordance with the relevant regulations must take all reasonable steps to ensure that it is properly used or applied as the case may be<sup>15</sup>.

Every employee must make full and proper use of any control measure, other thing or facility provided in accordance with those regulations and, where relevant, must take all reasonable steps to ensure it is returned after use to any accommodation provided for it and, if he discovers a defect in it, report it forthwith to his employer<sup>16</sup>.

Every employer who provides any control measure to meet the requirements set out above must ensure that (i) in the case of plant and equipment, including engineering controls and personal protective equipment, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and (ii) in the case of the provision of systems of work and supervision and any other measure, it is reviewed at suitable intervals and revised if necessary<sup>17</sup>. Where engineering controls are provided to meet those requirements, the employer must ensure that thorough examination and testing of those controls is carried out, in the case of local exhaust ventilation plant, at least once every 14 months, and in any other case, at suitable intervals<sup>18</sup>. Where respiratory protective equipment, other than disposable respiratory protective equipment, is provided to meet those requirements, the employer must ensure that thorough examination and, where appropriate, testing of that equipment is carried out at suitable intervals<sup>19</sup>. Every employer must keep a suitable record of the examinations and tests so carried out and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary of it must be kept available for at least five years from the date on which it was made<sup>20</sup>.

Every employer must ensure that personal protective equipment, including protective clothing, is properly stored in a well-defined place, checked at suitable intervals and, when discovered to be defective, repaired or replaced before further use<sup>21</sup>. Personal protective equipment which may be contaminated by lead must be removed on leaving the working area and kept apart from uncontaminated clothing and equipment<sup>22</sup>. The employer must ensure that that equipment is subsequently decontaminated and cleaned or, if necessary, destroyed<sup>23</sup>.

Every employer must ensure, so far as is reasonably practicable, that his employees do not eat, drink or smoke in any place which is, or is liable to be, contaminated by lead<sup>24</sup>. An employee must not eat, drink or smoke in any place which he has reason to believe to be contaminated by lead<sup>25</sup>. Nothing in this provision, however, prevents the provision and use of drinking facilities in a place which is liable to be contaminated by lead provided such facilities are not liable to be contaminated by lead and where they are required for the welfare of employees who are exposed to lead<sup>26</sup>.

Where the risk assessment indicates that any of his employees are liable to receive significant exposure to lead, the employer must ensure that the concentration of lead in air to which his employees are exposed is measured in accordance with a suitable procedure<sup>27</sup>. That monitoring must be carried out at least every three months<sup>28</sup> but except where the exposure arises wholly or in part from exposure to lead alkyls<sup>29</sup>, the interval between each occasion of monitoring may be increased to a maximum of 12 months where:

- 1176 (A) there has been no material change in the work or the conditions of exposure since the last occasion of monitoring; and
- 1177 (B) the lead in air concentration for each group of employees or work area has not exceeded 0.10 mg/m<sup>3</sup> on the two previous consecutive occasions on which monitoring was carried out<sup>30</sup>.

The employer must ensure that a suitable record of monitoring carried out for these purposes is made and maintained and that that record or a suitable summary of it is kept available for at least five years from the date of the last entry made in it<sup>31</sup>. Where an employee is required<sup>32</sup> to be under medical surveillance, an individual record of any monitoring so carried out must be made, maintained and kept in respect of that employee<sup>33</sup>. The employer must, on reasonable notice being given, allow an employee access to his personal monitoring record<sup>34</sup>. He must also provide the Health and Safety Executive with copies of such monitoring records as the Executive may require<sup>35</sup> and must, if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all monitoring records kept by him<sup>36</sup>.

1 As to the application of the duties set out in the text to a self-employed person, and their application to work outside Great Britain, see PARA 641 note 1.

2 As to exposure to lead see PARA 642 note 2; and as to the meaning of 'lead' see PARA 641 note 3.

3 As to what is reasonably practicable see PARA 417.

4 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(1). For these purposes, 'adequate' means adequate having regard only to the nature and degree of exposure to lead and 'adequately' is to be construed accordingly: reg 6(10).

Without prejudice to the generality of reg 6(1), where there is exposure to lead, control of that exposure is, so far as the inhalation of lead is concerned, only to be treated as being adequate if (1) the occupational exposure limit for lead is not exceeded; or (2) where that occupational exposure limit is exceeded, the employer identifies the reasons for the limit being exceeded and takes immediate steps to remedy the situation: reg 6(6). As to the meaning of 'occupational exposure limit for lead' see PARA 642 note 9.

5 As to the meaning of 'workplace' see PARA 642 note 2.

6 As to the meaning of 'risk' see PARA 642 note 3.

7 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(2).

8 As to the meaning of 'risk assessment' see PARA 642 note 6.

9 'Personal protective equipment' means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to his health, and any addition or accessory designed to meet that objective: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1). Personal protective equipment provided by an employer in accordance with this provision must be suitable for the purpose and must (1) comply with any provision in the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARA 567) which is applicable to that item of personal protective equipment; or (2) in the case of respiratory protective equipment, where no provision referred to in head (1) above applies, be of a type approved or must conform to a standard approved, in either case, by the Health and Safety Executive: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(7). As to the meaning of 'approved' see PARA 641 note 4. As to the Health and Safety Executive see PARA 361 et seq.

10 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(3).

11 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(4).

12 'Control measure' means a measure taken to reduce exposure to lead (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, the provision and use of engineering controls and personal protective equipment): Control of Lead at Work Regulations 2002, SI 2002/2676, reg 2(1).

13 As to the meaning of 'significant' see PARA 642 note 16.

14 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(5).

15 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(8).

16 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6(9).

17 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(1) (substituted by SI 2004/3386).

18 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(2).

19 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(3).

20 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(4).

21 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(5).

22 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(6).

23 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 8(7).

24 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 7(1). As to places contaminated with lead see PARA 642 note 2.

- 25 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 7(2).
- 26 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 7(3).
- 27 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(1).
- 28 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(2).
- 29 As to the meaning of 'lead alkyls' see PARA 641 note 3.
- 30 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(3).
- 31 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(4).
- 32 le by the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10: see PARA 644.
- 33 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(5).
- 34 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(6)(a).
- 35 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(6)(b).
- 36 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9(6)(c).

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#### **644. Medical surveillance.**

Every employer<sup>1</sup> must ensure that each of his employees who is or is liable to be exposed to lead<sup>2</sup> is under suitable medical surveillance<sup>3</sup> by a relevant doctor<sup>4</sup> where:

- 1178 (1) the exposure of the employee to lead is, or is liable to be, significant<sup>5</sup>;
- 1179 (2) the blood-lead concentration or urinary lead concentration of the employee is measured and equals or exceeds the specified levels<sup>6</sup>; or
- 1180 (3) a relevant doctor certifies that the employee should be under such medical surveillance,

and the technique of investigation is of low risk to the employee<sup>7</sup>. Medical surveillance so required must:

- 1181 (a) so far as is reasonably practicable<sup>8</sup>, be commenced before an employee for the first time commences work giving rise to exposure to lead and in any event within 14 working days of such commencement; and
- 1182 (b) subsequently be conducted at intervals of not more than 12 months or such shorter intervals as the relevant doctor may require<sup>9</sup>.

Biological monitoring<sup>10</sup> must be carried out at intervals not exceeding those specified<sup>11</sup>.

The employer must ensure that an adequate health record in respect of each of his employees to whom the requirement for medical surveillance applies is made and maintained and that that record or a copy of it is kept available in a suitable form for at least 40 years from the date of the last entry made in it<sup>12</sup>. The employer must, on reasonable notice being given, allow an employee access to his personal health record<sup>13</sup>. He must also provide the Health and Safety Executive with copies of such health records as the Executive may require<sup>14</sup> and, if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all health records kept by him<sup>15</sup>.

Where the blood-lead concentration for an employee equals or exceeds the appropriate action level<sup>16</sup>, the employer must take steps to determine the reason or reasons for the high level of lead in blood and must, so far as is reasonably practicable, give effect to measures designed to reduce the blood-lead concentration of that employee to a level below the appropriate action level<sup>17</sup>. In any case where the blood-lead concentration or urinary lead concentration of an employee reaches the appropriate suspension level<sup>18</sup>, the employer of that employee must:

- 1183 (i) ensure that an entry is made in the health record of the employee by a relevant doctor certifying whether in the professional opinion of the doctor the employee should be suspended from work which is liable to expose that employee to lead<sup>19</sup>;
- 1184 (ii) ensure that a relevant doctor informs the employee accordingly and provides the employee with information and advice regarding further medical surveillance;
- 1185 (iii) review the risk assessment<sup>20</sup>;

- 1186 (iv) review any measure taken to comply with the statutory requirement to prevent or control exposure to lead<sup>21</sup>, taking into account any advice given by a relevant doctor or by the Executive; and
- 1187 (v) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination where such an examination is recommended by a relevant doctor or by the Executive<sup>22</sup>.

Where a relevant doctor has certified by an entry in the health record of an employee that in his professional opinion that employee should not be engaged in work which exposes the employee to lead or that the employee should only be so engaged under conditions specified in the record, the employer may not permit the employee to be engaged in work which exposes that employee to lead except in accordance with the conditions, if any, specified in the health record, unless that entry has been cancelled by a relevant doctor<sup>23</sup>.

Where medical surveillance is carried out on the premises of the employer, the employer must ensure that suitable facilities are made available for the purpose<sup>24</sup>.

An employee to whom these provisions apply must, when required by his employer and at the cost of the employer, present himself during his working hours for such medical surveillance procedures as may be required for these purposes and must furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require<sup>25</sup>.

Where for the purpose of carrying out his functions under the relevant regulations<sup>26</sup> a relevant doctor requires to inspect any workplace<sup>27</sup> or any record kept for the purposes of those regulations, the employer must permit that doctor to do so<sup>28</sup>.

The employer must ensure that in respect of each female employee whose exposure to lead is or is liable to be significant an entry is made in the health record of that employee by a relevant doctor as to whether or not that employee is of reproductive capacity<sup>29</sup>.

Where an employee or an employer is aggrieved by a decision recorded in the health record by a relevant doctor:

- 1188 (A) that an employee should not be engaged in work which exposes that employee to lead, or which imposes conditions on such work; or
- 1189 (B) that a female employee is of reproductive capacity,

the employee or employer may, by an application in writing to the Executive within 28 days of the date upon which the decision was notified to the employee or employer as the case may be, apply for that decision to be reviewed in accordance with a procedure approved by the Health and Safety Executive, and the result of that review must be notified to the employee and employer and entered in the health record in accordance with the approved procedure<sup>30</sup>.

1 As to the application of the duties set out in the text to a self-employed person, and their application to work outside Great Britain, see PARA 641 note 1.

2 As to exposure to lead see PARA 642 note 2; and as to the meaning of 'lead' see PARA 641 note 3.

3 As to the meaning of 'medical surveillance' see PARA 642 note 13.

4 As to the meaning of 'relevant doctor' see PARA 641 note 7.

5 As to the meaning of 'significant' see PARA 642 note 16.

6 The levels referred to in the text are (1) a blood-lead concentration of (a) in respect of a woman of reproductive capacity, 20 µg/dl; or (b) in respect of any other employee, 35 µg/dl; or (2) a urinary lead concentration of (a) in respect of a woman of reproductive capacity, 20 µg Pb/g creatinine; or (b) in respect of



any other employee, 40 µg Pb/g creatinine: Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(2). As to the meaning of 'woman of reproductive capacity' see PARA 641 note 7.

7 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(1).

8 As to what is reasonably practicable see PARA 417.

9 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(3).

10 As to the meaning of 'biological monitoring' see PARA 642 note 13.

11 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(4). The specified intervals are (1) in respect of an employee other than a young person or a woman of reproductive capacity, at least every six months, but where the results of the measurements for individuals or for groups of workers have shown on the previous two consecutive occasions on which monitoring was carried out a lead in air exposure greater than 0.075 mg/m<sup>3</sup> but less than 0.100 mg/m<sup>3</sup> and where the blood-lead concentration of any individual employee is less than 30 µg/dl, the frequency of monitoring may be reduced to once a year; or (2) in respect of any young person or a woman of reproductive capacity, at such intervals as the relevant doctor must specify, being not greater than three months: reg 10(4)(a), (b). As to the meaning of 'young person' see PARA 641 note 6.

12 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(5).

13 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(6)(a).

14 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(6)(b). As to the Health and Safety Executive see PARA 361 et seq.

15 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(6)(c).

16 As to the meaning of 'action level' see PARA 642 note 10.

17 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(7).

18 As to the meaning of 'suspension level' see PARA 642 note 11.

19 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(8)(a). Further to reg 10(8)(a), where in the opinion of the relevant doctor the employee need not be suspended from work which is liable to expose that employee to lead the entry made in the health record must include the reasons for that opinion and the conditions, if any, under which the employee may continue to be employed in such work: reg 10(9). As to suspension from work on health grounds see further PARA 455.

20 As to the meaning of 'risk assessment' see PARA 642 note 6.

21 I.e. the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 6: see PARA 643.

22 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(8)(b)-(e).

23 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(10).

24 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(11).

25 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(12).

26 I.e. under the Control of Lead at Work Regulations 2002, SI 2002/2676: see PARAS 641-643, 645-646.

27 As to the meaning of 'workplace' see PARA 642 note 2.

28 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(13).

29 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(14).

30 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10(15) (amended by SI 2008/960).

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#### **645. Information, instruction and training.**

Every employer<sup>1</sup> who undertakes work which is liable to expose an employee to lead<sup>2</sup> must provide that employee with suitable and sufficient information, instruction and training<sup>3</sup>. The information, instruction and training so provided must<sup>4</sup> include:

- 1190 (1) details of the form of lead to which the employee is liable to be exposed including:  
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- 237. (a) the risk<sup>5</sup> which it presents to health;
- 238. (b) any relevant occupational exposure limit<sup>6</sup>, action level<sup>7</sup> and suspension level<sup>8</sup>;
- 239. (c) access to any relevant safety data sheet<sup>9</sup>; and
- 240. (d) other legislative provisions which concern the hazardous<sup>10</sup> properties of that form of lead;
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- 1191 (2) the significant<sup>11</sup> findings of the risk assessment<sup>12</sup>;
- 1192 (3) the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other employees at the workplace<sup>13</sup>;
- 1193 (4) the results of any monitoring of exposure to lead carried out<sup>14</sup>; and
- 1194 (5) the collective results of any medical surveillance undertaken<sup>15</sup> in a form calculated to prevent those results from being identified as relating to a particular person<sup>16</sup>.

The information, instruction and training so required must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment<sup>17</sup>.

Every employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under the relevant regulations<sup>18</sup> has suitable and sufficient information, instruction and training<sup>19</sup>.

Where containers and pipes for lead used at work are not marked in accordance with any relevant legislation<sup>20</sup>, the employer must, without prejudice to any derogations provided for in that legislation, ensure that the contents of those containers and pipes, together with the nature of those contents and any associated hazards, are clearly identifiable<sup>21</sup>.

1 As to the application of the duties set out in the text to a self-employed person, and their application to work outside Great Britain, see PARA 641 note 1.

2 As to exposure to lead see PARA 642 note 2; and as to the meaning of 'lead' see PARA 641 note 3.

3 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(1).

4 ie without prejudice to the generality of the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(1); reg 11(2).

5 As to the meaning of 'risk' see PARA 642 note 3.

- 6 As to the meaning of 'occupational exposure limit' see PARA 642 note 9.
- 7 As to the meaning of 'action level' see PARA 642 note 10.
- 8 As to the meaning of 'suspension level' see PARA 642 note 11.
- 9 As to the meaning of 'safety data sheet' see PARA 642 note 8.
- 10 As to the meaning of 'hazardous' see PARA 642 note 7.
- 11 As to the meaning of 'significant' see PARA 642 note 16.
- 12 As to the meaning of 'risk assessment' see PARA 642 note 6.
- 13 As to the meaning of 'workplace' see PARA 642 note 2.
- 14 Ie in accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 9: see PARA 643.
- 15 Ie in accordance with the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 10: see PARA 644. As to the meaning of 'medical surveillance' see PARA 642 note 13.
- 16 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(2).
- 17 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(3).
- 18 Ie under the Control of Lead at Work Regulations 2002, SI 2002/2676: see PARAS 641-644, 646.
- 19 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(4).
- 20 Ie relevant legislation listed in the Control of Lead at Work Regulations 2002, SI 2002/2676, Sch 2. The legislation so listed is (1) the Health and Safety (Safety Signs and Signals) Regulations 1996, SI 1996/341 (see PARA 445); (2) the Good Laboratory Practice Regulations 1999, SI 1999/3106 (see PARAS 580-581); (3) the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689 (revoked: see now the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716) (see PARAS 571-572); and (4) the Carriage of Dangerous Goods and Use of Transportable Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348) (see PARAS 555-557; and **CARRIAGE AND CARRIERS**): Control of Lead at Work Regulations 2002, SI 2002/2676, Sch 2 (substituted by SI 2004/568; and amended by SI 2007/1573).
- 21 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 11(5).

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#### **646. Arrangements to deal with accidents, incidents and emergencies.**

Subject to certain exceptions<sup>1</sup> and without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations 1999<sup>2</sup>, in order to protect the health of his employees from an accident, incident or emergency related to the presence of lead<sup>3</sup> at the workplace<sup>4</sup>, the employer<sup>5</sup> must ensure that:

- 1195 (1) procedures, including the provision of appropriate first-aid facilities and relevant safety drills, which must be tested at regular intervals, have been prepared which can be put into effect when such an event occurs;
- 1196 (2) information on emergency arrangements, including details of relevant work hazards<sup>6</sup> and hazard identification arrangements and specific hazards likely to arise at the time of an accident, incident or emergency, is available; and
- 1197 (3) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs<sup>7</sup>.

The employer must ensure that information on the procedures and systems required by heads (1) and (3) above and the information required by head (2) above is made available to relevant accident and emergency services to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures, and is displayed at the workplace, if this is appropriate<sup>8</sup>.

Subject to the same exceptions<sup>9</sup>, in the event of an accident, incident or emergency related to the presence of lead at the workplace, the employer must ensure that immediate steps are taken to mitigate the effects of the event, restore the situation to normal, and inform those of his employees who may be affected<sup>10</sup>. He must also ensure that only those persons who are essential for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with appropriate personal protective equipment<sup>11</sup> and any necessary specialised safety equipment and plant, which must be used until the situation is restored to normal<sup>12</sup>.

<sup>1</sup> le subject to the Control of Lead at Work Regulations 2002, SI 2002/2676, reg 12(4). Regulation 12(1), (3) (see the text and notes 2-12) does not apply where (1) the results of the risk assessment show that, because of the quantity of lead present at the workplace, there is only a slight risk to the health of employees; and (2) the measures taken by the employer to comply with the duty under reg 6(1) (see PARA 643) are sufficient to control that risk: reg 12(4). As to the meaning of 'risk assessment' see PARA 642 note 6; and as to the meaning of 'lead' see PARA 641 note 3.

<sup>2</sup> le the provisions of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242: see PARA 429 et seq.

<sup>3</sup> As to exposure to or contamination with lead see PARA 642 note 2.

<sup>4</sup> As to the meaning of 'workplace' see PARA 642 note 2.

<sup>5</sup> As to the application of the duties set out in the text to a self-employed person, and their application to work outside Great Britain, see PARA 641 note 1.

- 6 As to the meaning of 'hazard' see PARA 642 note 7.
- 7 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 12(1).
- 8 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 12(2).
- 9 See note 1.
- 10 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 12(3)(a).
- 11 As to the meaning of 'personal protective equipment' see PARA 643 note 9.
- 12 Control of Lead at Work Regulations 2002, SI 2002/2676, reg 12(3)(b).

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## ***E. IONISING RADIATION***

### **647. Justification of practices involving ionising radiation.**

Provision has been made prohibiting the carrying out of types or classes of practice involving exposure to ionising radiation unless they have been justified by the Secretary of State or the Welsh Ministers (the 'justifying authority')<sup>1</sup>.

A person may carry out a practice, resulting in exposure to ionising radiation, belonging to an existing class or type of practice<sup>2</sup>, unless it has been determined in the most recent applicable justification decision that that class or type of practice that is not justified, and the date for ceasing to carry out the practice<sup>3</sup>, has passed<sup>4</sup>. In general, no person may carry out a practice, resulting in exposure to ionising radiation, belonging to a new class or type of practice (ie if no practice in that class or type was carried out in the United Kingdom before 13 May 2000, and neither has the class or type of practice been found to be justified)<sup>5</sup>.

A person may apply to the justifying authority for a justification decision in respect of a new class or type of practice<sup>6</sup>, whereupon the justifying authority must consider it and make a justification decision in respect of that class or type of practice<sup>7</sup>. Additionally the justifying authority may without receiving an application make a justification decision in respect of a new class or type of practice<sup>8</sup>.

A person may apply to the justifying authority to review an existing class or practice if new and important evidence about its efficacy or consequences is acquired, or if there has been a justification decision that it is not justified<sup>9</sup>. The justifying authority must consider the application and may make a new justification decision in respect of that class or type of practice<sup>10</sup>. Additionally the justifying authority may conduct such a review without receiving an application<sup>11</sup>.

The justifying authority is empowered to require information to be furnished to it<sup>12</sup>, and to hold inquiries and hearings<sup>13</sup>. Duties to consult are imposed on the justifying authority and others in relation to a justification decision, a determination as to whether a practice is new or existing, or a contravention notice<sup>14</sup>. The justifying authority must maintain a register of applications and justification decisions<sup>15</sup>.

No person may knowingly or recklessly add any radioactive substance in the production of personal ornaments or toys, or knowingly or recklessly import or export any personal ornament, toy or cosmetic to which any radioactive substance has been added in its production<sup>16</sup>.

The justifying authority may serve a contravention notice for breach of the prohibitions imposed under the provisions described above, or failure to comply with certain other conditions and requirements<sup>17</sup>.

It is an offence<sup>18</sup> for a person (1) to fail without reasonable excuse to comply with any requirement imposed by a contravention notice<sup>19</sup>; (2) to provide information which is false or misleading in a material particular<sup>20</sup>; intentionally to obstruct the justifying authority, or a person to whom the justifying authority has delegated the enforcement powers<sup>21</sup>, in the exercise or performance of his powers<sup>22</sup>; (3) without reasonable excuse (a) to fail to comply

with any requirement imposed; (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by the justifying authority, or a person to whom the justifying authority has delegated enforcement powers; or (c) to prevent any other person from appearing before or answering any question required to be answered by the justifying authority<sup>23</sup>; (4) falsely to pretend to be a person to whom the justifying authority has delegated the enforcement powers<sup>24</sup>.

1 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, which implement Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) art 6(1), (2), (5) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. As to the justifying authority see the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 6 (amended by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 30(1), (2)(d)). The regulations apply to practices only to the extent to which the 1996 Directive applies to them: Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 2.

'Justified' in relation to a class or type of practice means justified by its economic, social or other benefits in relation to the health detriment it may cause: reg 4(2).

As to the duty to report the release of a substance in a quantity sufficient to cause death, major injury or damage to health see also the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 21; and PARA 400.

2 Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 5(2). A class or type of practice involving exposure to ionising radiation is an 'existing class or type of practice' if a practice in that class or type was carried out in the United Kingdom before 13 May 2000, or it has been found to be justified, or both: reg 5(1). A class or type of practice is 'found to be justified' if a justification decision has been made determining that it is justified: reg 4(4).

A 'justification decision' is a decision which is made by the justifying authority in specified form, and which determines whether a class or type of practice is justified: reg 4(3). For transitional provision relating to justification decisions made before the 2004 regulations came into force (2 August 2004: reg 1) see reg 8.

Justification decisions must generally be made by regulations: see reg 14(1). They may be made subject to such conditions as the justifying authority may consider appropriate: reg 11(1). As to notification of justification decisions see reg 14(3)-(6).

The Secretary of State may, and at the request of any other person must, determine whether a practice belongs to a new or existing class or type of practice: reg 12(1). As to the Secretary of State see PARA 349 et seq.

3 If the justifying authority in considering a justification decision determines that an existing class or type of practice is not justified he must specify in the justification decision a date, which may be later than the date of the justification decision, after which persons must cease from carrying out practices of that class or type; and may specify by notice served on an operator or any other person, steps which that person is required to take which the justifying authority considers appropriate as a consequence of the decision: Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 11(2).

4 Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 5(3). See also reg 4(3)(b). For transitional provisions relating to new classes or types of practice see reg 7. Nothing in reg 4(5) (see the text to note 5) or reg 5(3) prevents anything permitted under the Ionising Radiation (Medical Exposure) Regulations 2000, SI 2000/1059, reg 6 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1474): Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 21.

5 Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 4(1), (5). See also reg 4(3)(a). As to the time for determining applications see reg 15. As to the determination of whether a class or type of practice is new or existing see note 2.

6 Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 9(1). Applications under reg 9 are deemed to include requests under reg 12(1) (see note 2): reg 12(2). As to the procedure on an application see reg 13.

7 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, regs 9(2), 14(2).

8 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, regs 9(3), 14(2).

9 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 10(1), (4); and see note 6.

10 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, regs 10(2), 14(2).

11 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, regs 10(3), 14(2).

12 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 16.

13 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 17.

14 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 18 (amended by SI 2005/525).

15 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 19.

16 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 20(1).

17 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 22(1), (2), which refers to a 'relevant breach' (ie a contravention of reg 4(5), 5(3) or 20, or a failure to comply with conditions imposed under reg 11(1), or requirements imposed under reg 11(2)(b), or 16(1)). As to the notification and content of such a notice see reg 22(3), (4) (reg 22(3) amended by SI 2005/525). The justifying authority may vary or withdraw any contravention notice by serving a further notice; and the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 22(3) and, in the case of a variation, reg 22(4), apply to that notice: reg 22(5). As to the powers exercisable by the justifying authority to determine whether a breach has been committed see reg 23, Sch 1.

18 The offence is punishable on summary conviction, with a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months or to both; or on conviction on indictment, with a fine or imprisonment for a term not exceeding two years or to both: Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(3). As to offences by bodies corporate see reg 25, Sch 2. As to the statutory maximum see PARA 853 note 9. Except as provided in reg 27 (delegation of enforcement powers: see note 21), proceedings in respect of any offence under the 2004 regulations may not be instituted except by or with the consent of the justifying authority: see reg 26.

19 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(1) (a).

20 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(1) (b).

21 The justifying authority may delegate any or all of the following powers (1) the powers under the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 22 or 23; (2) the power to serve a notice under reg 16, for the purpose of discharging any function delegated under reg 27(a); (3) except in Scotland, the power to institute prosecutions under reg 26; and may make such delegation subject to conditions: reg 27(1). The justifying authority may delegate the obligations arising under regs 14(5) and 18, in so far as they arise out of the discharge or intended discharge of any function delegated under reg 27(1): reg 27(2). A delegation made under reg 27(1) is a determination to which reg 14(6) (notice to be given in the Gazette) applies: reg 27(3).

22 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(2) (a).

23 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(2) (b).

24 See the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 24(2) (c).



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(2) PROTECTION FROM GENERAL RISKS/(v) Hazardous and Dangerous Substances etc/E. IONISING RADIATION/648. General principles and procedures.

#### **648. General principles and procedures.**

A radiation employer<sup>1</sup> must comply with the registration requirements of the Radioactive Substances Act 1993<sup>2</sup>; and may not, except in accordance with a prior written authorisation granted by the Health and Safety Executive<sup>3</sup>, carry out the following practices<sup>4</sup>:

- 1198 (1) the use of electrical equipment intended to produce X-rays for the purpose of industrial radiography, the processing of products, research or the exposure of persons for medical treatment; or
- 1199 (2) the use of accelerators<sup>5</sup>, except electron microscopes<sup>6</sup>,

although these restrictions do not apply in respect of any practice of a type which is for the time being authorised by the Executive where such practice is or is to be carried out in accordance with such conditions as may from time to time be approved by the Executive in respect of that type of practice<sup>7</sup>.

A radiation employer to whom the above provisions apply and who is aggrieved by a decision of the Executive refusing to grant such an authorisation, imposing a limit of time upon an authorisation so granted or revoking such an authorisation<sup>8</sup>, or who is aggrieved by the terms of any conditions attached to the authorisation by the Executive<sup>9</sup>, may appeal to the Secretary of State<sup>10</sup>.

Subject to certain exceptions<sup>11</sup>, a radiation employer may not for the first time carry out work with ionising radiation to which these provisions apply<sup>12</sup> unless at least 28 days before commencing that work or before such shorter time as the Executive may agree he has notified the Executive of his intention to carry out that work and has provided the Executive with the specified particulars<sup>13</sup>. Where a radiation employer has so notified work, the Executive may, by notice in writing served on him, require that radiation employer to provide such additional particulars of that work as it may reasonably require, being any or all of the particulars specified in that regard<sup>14</sup>, and in such a case the radiation employer must provide those particulars by such time as is specified in the notice or by such other time as the Executive may subsequently agree<sup>15</sup>. Where a radiation employer has notified work in accordance with this requirement and subsequently makes a material change in that work which would affect the particulars so notified, he must forthwith notify the Executive of that change<sup>16</sup>; but nothing in this provision is to be taken as requiring the cessation of the work to be so notified except where the site or any part of the site in which the work was carried on has been or is to be vacated<sup>17</sup>.

Before a radiation employer commences a new activity involving work with ionising radiation in respect of which no risk assessment has been made by him, he must make a suitable and sufficient assessment of the risk to any employee<sup>18</sup> and other person for the purpose of identifying the measures he needs to take to restrict the exposure of that employee or other person to ionising radiation<sup>19</sup>. Without prejudice to this requirement, a radiation employer may not carry out work with ionising radiation unless he has made an assessment sufficient to demonstrate that all hazards with the potential to cause a radiation accident<sup>20</sup> have been identified and the nature and magnitude of the risks to employees and other persons arising from those hazards have been evaluated<sup>21</sup>. Where the assessment made for these purposes shows that a radiation risk to employees or other persons exists from an identifiable radiation

accident, the radiation employer must take all reasonably practicable steps to prevent any such accident, to limit the consequences of any such accident which does occur and to provide employees with the information, instruction and training, and with the equipment necessary, to restrict their exposure to ionising radiation<sup>22</sup>.

Every radiation employer must, in relation to any work with ionising radiation that he undertakes, take all necessary steps to restrict so far as is reasonably practicable the extent to which his employees and other persons are exposed to ionising radiation<sup>23</sup>. Without prejudice to the generality of this requirement, a radiation employer must:

- 1200 (a) so far as is reasonably practicable achieve the restriction of exposure to ionising radiation so required by means of engineering controls and design features and in addition by the provision and use of safety features and warning devices<sup>24</sup>; and
- 1201 (b) in addition to head (a) above, provide such systems of work as will, so far as is reasonably practicable, restrict the exposure to ionising radiation of employees and other persons<sup>25</sup>; and
- 1202 (c) in addition to heads (a) and (b) above, where it is reasonably practicable to further restrict exposure to ionising radiation by means of personal protective equipment, provide employees or other persons with adequate and suitable personal protective equipment (including respiratory protective equipment) unless the use of personal protective equipment of a particular kind is not appropriate having regard to the nature of the work or the circumstances of the particular case<sup>26</sup>.

Every employer must, for the purpose of determining whether the requirements of restriction to exposure<sup>27</sup> are being met, ensure that an investigation is carried out forthwith when the effective dose<sup>28</sup> of ionising radiation received by any of his employees for the first time in any calendar year<sup>29</sup> exceeds 15 mSv or such other lower effective dose as the employer may specify<sup>30</sup>. Without prejudice to the general requirement to restrict exposure, a radiation employer must ensure that, in relation to an employee who is pregnant, the conditions of exposure are such that, after her employer has been notified of the pregnancy, the equivalent dose to the foetus is unlikely to exceed 1 mSv during the remainder of the pregnancy and that, in relation to an employee who is breastfeeding, the conditions of exposure are restricted so as to prevent significant bodily contamination of that employee<sup>31</sup>.

Subject to certain exceptions<sup>32</sup>, every employer must ensure that his employees and other persons within a specified class<sup>33</sup> are not exposed to ionising radiation to an extent that any specified dose limit<sup>34</sup> for such class of person is exceeded in any calendar year<sup>35</sup>.

The Ionising Radiations Regulations 1999 are supported by an approved code of practice<sup>36</sup> and the Health and Safety Executive provides additional information and guidance<sup>37</sup>.

1 'Radiation employer' means an employer who in the course of a trade, business or other undertaking carries out work with ionising radiation and, for the purposes of regs 5, 6 and 7, includes an employer who intends to carry out such work; and 'ionising radiation' means the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometres or less or a frequency of  $3 \times 10^{15}$  hertz or more capable of producing ions directly or indirectly: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1). For these purposes, unless the context otherwise requires, any reference to an employer includes a reference to a self-employed person and any duty imposed by the 1999 regulations on an employer in respect of his employee extends to a self-employed person in respect of himself: reg 2(2)(a). For these purposes and for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), the word 'work' is to be extended to include any instruction or training which a person undergoes as a trainee and the meaning of 'at work' is to be extended accordingly: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(3)(a).

Duties under the 1999 regulations imposed upon the employer are also to be imposed upon (1) the manager of a mine (within the meaning of the Mines and Quarries Act 1954 s 180: see PARA 343 note 1); and (2) the operator of a quarry (within the meaning of the Quarries Regulations 1999, SI 1999/2024: see PARA 838), in so

far as those duties relate to the mine or part of the mine of which he is the manager or the quarry of which he is the operator and to matters within his control: Ionising Radiations Regulations 1999, SI 1999/3232, reg 4(2). Subject to reg 6(1)(b) (see the text and note 12 head (2)), duties under the 1999 regulations imposed upon the employer are also to be imposed on the holder of a nuclear site licence under the Nuclear Installations Act 1965 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487) in so far as those duties relate to the licensed site: Ionising Radiations Regulations 1999, SI 1999/3232, reg 4(3).

Subject as follows, the 1999 regulations apply to any work outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305) as they apply to work within Great Britain; but for these purposes, in any case where it is not reasonably practicable for an employer to comply with the requirements of those regulations in so far as they relate to functions being performed by an appointed doctor or employment medical adviser or by an approved dosimetry service, it is sufficient compliance with any such requirements if the employer makes arrangements affording an equivalent standard of protection for his employees and those arrangements are set out in local rules: Ionising Radiations Regulations 1999, SI 1999/3232, reg 38(1), (2); Interpretation Act 1978 s 17(2). 'Local rules' means rules made in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 17 (see PARA 650): reg 2(1). As to the meanings of 'appointed doctor' and 'employment medical adviser' see note 34; and as to the meaning of 'approved dosimetry service' see PARA 651 note 18. As to what is reasonably practicable see PARA 417.

As to enforcement of, and exemptions from, the 1999 regulations see PARA 654. Note that record-keeping requirements of the regulations repealed by the 1999 regulations are preserved: see reg 41(4).

2 See the Radioactive Substances Act 1993; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1439 et seq.

3 An authorisation so granted may be granted subject to conditions and with or without limit of time and may be revoked in writing at any time: Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(3). Where an authorisation has been granted pursuant to reg 5(1) and the radiation employer to whom the authorisation was granted subsequently makes a material change to the circumstances relating to that authorisation, that change must forthwith be notified to the Executive by the radiation employer: reg 5(4). As to the Health and Safety Executive see PARA 361 et seq.

4 'Practice' means work involving (1) the production, processing, handling, use, holding, storage, transport or disposal of radioactive substances; or (2) the operation of any electrical equipment emitting ionising radiation and containing components operating at a potential difference of more than 5kv, which can increase the exposure of individuals to radiation from an artificial source, or from a radioactive substance containing naturally occurring radionuclides which are processed for their radioactive, fissile or fertile properties; and 'radioactive substance' means any substance which contains one or more radionuclides whose activity cannot be disregarded for the purposes of radiation protection: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1). 'Transport' means, in relation to a radioactive substance, carriage of that substance on a road within the meaning of, in relation to England and Wales, the Road Traffic Act 1988 s 192 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 209) or through another public place (whether on a conveyance or not), or by rail, inland waterway, sea or air and, in the case of transport on a conveyance, a substance is to be deemed as being transported from the time that it is loaded onto the conveyance for the purpose of transporting it until it is unloaded from that conveyance, but a substance is not to be considered as being transported if it is transported by means of a pipeline or similar means or if it forms an integral part of a conveyance and is used in connection with the operation of that conveyance: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

Subject to the following provisions and to reg 6(1) (see the text and note 12), the 1999 regulations apply to (a) any practice; (b) any work (other than a practice) carried out in an atmosphere containing radon 222 gas at a concentration in air, averaged over any 24 hour period, exceeding  $400 \text{ Bq m}^{-3}$  except where the concentration of the short-lived daughters of radon 222 (see note 13) in air averaged over any 8 hour working period does not exceed  $6.24 \times 10^{-7} \text{ Jm}^{-3}$ ; and (c) any work (other than work referred to in heads (a) and (b) above) with any radioactive substance containing naturally occurring radionuclides: reg 3(1). The following regulations do not apply where the only work being undertaken is that referred to in head (b) above, ie regs 23, 27-30, 32 and 33 (see PARA 651 et seq): reg 3(2). The following regulations do not apply in relation to persons undergoing medical exposures, ie regs 7, 8, 11, 16-18, 23, 25, 31(1) and 34(1) (see the text and notes 18-35; and PARA 650 et seq): reg 3(3). 'Medical exposure' means exposure of a person to ionising radiation for the purpose of his medical or dental examination or treatment which is conducted under the direction of a suitably qualified person and includes any such examination for legal purposes and any such examination or treatment conducted for the purposes of research: reg 2(1). Regulation 11 (see the text and notes 32-35) does not apply in relation to any comforter and carer: reg 3(4). 'Comforter and carer' means an individual who (other than as part of his occupation) knowingly and willingly incurs an exposure to ionising radiation resulting from the support and comfort of another person who is undergoing or who has undergone any medical exposure: reg 2(1).

5 'Accelerator' means an apparatus or installation in which particles are accelerated and which emits ionising radiation with an energy higher than 1MeV: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

6 Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(1).

7 Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(2). 'Approved' means approved for the time being in writing for the purposes of the 1999 regulations by Health and Safety Executive and published in such form as the Executive considers appropriate: reg 2(1). As to the Health and Safety Executive see PARA 361 et seq.

8 In revoking such an authorisation under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(3): see note 3.

9 In attached under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(3): see note 3.

10 Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(5). As to the Secretary of State see PARA 349 et seq. The Health and Safety at Work etc Act 1974 s 44(2)-(6) (see PARA 351) applies for these purposes as it applies to an appeal under s 44(1): Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(6). The Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, as respects England and Wales (see PARA 351), apply to an appeal under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(5) as they apply to an appeal under the Health and Safety at Work etc Act 1974 s 44(1), but with the modification that references to a licensing authority are to be read as references to the Executive: Ionising Radiations Regulations 1999, SI 1999/3232, reg 5(7).

11 In subject to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(7), (8) (see note 13) and to reg 39(1) (which relates to transitional provisions): reg 6(2).

12 The Ionising Radiations Regulations 1999, SI 1999/3232, reg 6 applies to work with ionising radiation except (1) work specified in Sch 1; and (2) work carried on at a site licensed under the Nuclear Installations Act 1965 s 1 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487): Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(1). 'Work with ionising radiation' means work to which the 1999 regulations apply by virtue of reg 3(1) (see note 4): reg 2(1).

Work with ionising radiation is not required to be notified in accordance with reg 6 when the only such work being carried out is in one or more of the following categories: (a) where the concentration of activity per unit mass of a radioactive substance does not exceed the concentration specified in Sch 8 Pt I col 2; (b) where the quantity of radioactive substance involved does not exceed the quantity specified in Sch 8 Pt I col 3; (c) where apparatus contains radioactive substances in a quantity exceeding the values specified in heads (a) and (b) above provided that (i) the apparatus is of a type approved by the Executive; (ii) the apparatus is constructed in the form of a sealed source; (iii) the apparatus does not under normal operating conditions cause a dose rate of more than  $1 \mu\text{Sv h}^{-1}$  at a distance of 0.1 m from any accessible surface; and (iv) conditions for the disposal of the apparatus have been specified by the appropriate Agency; (d) the operation of any electrical apparatus to which the 1999 regulations apply other than apparatus referred to in head (e) below provided that (i) the apparatus is of a type approved by the Executive; and (ii) the apparatus does not under normal operating conditions cause a dose rate of more than  $1 \mu\text{Sv h}^{-1}$  at a distance of 0.1 m from any accessible surface; (e) the operation of (i) any cathode ray tube intended for the display of visual images; or (ii) any other electrical apparatus operating at a potential difference not exceeding 30kv, provided that the operation of the tube or apparatus does not under normal operating conditions cause a dose rate of more than  $1 \mu\text{Sv h}^{-1}$  at a distance of 0.1 m from any accessible surface; (f) where the work involves material contaminated with radioactive substances resulting from authorised releases which the appropriate Agency has declared not to be subject to further control: Sch 1 para 1.

For these purposes, 'appropriate Agency' has the meaning assigned to it by the Radioactive Substances Act 1993 s 47(1) (ie in relation to England and Wales, the Environment Agency): Ionising Radiations Regulations 1999, SI 1999/3232, Sch 1 para 2. 'Sealed source' means a source containing any radioactive substance whose structure is such as to prevent, under normal conditions of use, any dispersion of radioactive substances into the environment, but it does not include any radioactive substance inside a nuclear reactor or any nuclear fuel element; 'dose rate' means, in relation to a place, the rate at which a person or part of a person would receive a dose of ionising radiation from external radiation if he were at that place being a dose rate at that place averaged over one minute; 'dose' means, in relation to ionising radiation, any dose quantity or sum of dose quantities mentioned in Sch 4 (see note 34); and 'external radiation' means, in relation to a person, ionising radiation coming from outside the body of that person: reg 2(1). Where reference is made to a quantity specified in Sch 8, that quantity is to be treated as being exceeded if (A) where only one radionuclide is involved, the quantity of that radionuclide exceeds the quantity specified in the appropriate entry in Sch 8; or (B) where more than one radionuclide is involved, the quantity ratio calculated in accordance with Sch 8 Pt II exceeds one: reg 2(4). Schedule 8 is not set out in detail in this work. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

13 Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(2). The specified particulars referred to in the text are those specified in Sch 2, ie (1) the name and address of the employer and a contact telephone or fax number or electronic mail address; (2) the address of the premises where or from where the work activity is to be carried out and a telephone or fax number or electronic mail address at such premises; (3) the nature of the

business of the employer; (4) into which of the following categories the source or sources of ionising radiation fall: (a) sealed source; (b) unsealed radioactive substance; (c) electrical equipment; (d) an atmosphere containing the short-lived daughters of radon 222; (5) whether or not any source is to be used at premises other than the address given at head (2) above; and (6) dates of notification and commencement of the work activity: Sch 2. 'Short-lived daughters of radon 222' means polonium 218, lead 214, bismuth 214 and polonium 214: reg 2(1).

Where the only work being undertaken is work referred to in reg 3(1)(b) or (c) (see note 4), it is a sufficient compliance with reg 6(2) if the radiation employer having control of the premises where the work is carried on makes the notification so required forthwith after the work has commenced: reg 6(7). In relation to work involving the care of a person to whom a radioactive medicinal product (within the meaning of the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006) has been administered, it is sufficient compliance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(2) if the notification so required is given as soon as is practicable before the carrying out of that work: reg 6(8). Where in respect of work with ionising radiation carried out prior to the coming into force of the 1999 regulations (ie 1 January 2000) except in respect of reg 5, which came into force on 13 May 2000: see reg 1) notification has been given to the Executive pursuant to any statutory requirement, the provisions of reg 6 apply to such notification as if that notification had been given in accordance with reg 6(2): reg 6(9).

In any proceedings against an employer for an offence under reg 6(2), it is a defence for that employer to prove that (i) he neither knew nor had reasonable cause to believe that he had carried out or might be required to carry out work subject to notification under that provision; and (ii) in a case where he discovered that he had carried out or was carrying out work subject to notification under that provision, he had forthwith notified the Executive of the information required by that provision: reg 36(1). As to offences due to the default of other persons see reg 36(7); and PARA 859.

14 The particulars specified in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 3. The following additional particulars may be required under reg 6(3): (1) a description of the work with ionising radiation; (2) particulars of the source or sources of ionising radiation including the type of electrical equipment used or operated and the nature of any radioactive substance; (3) the quantities of any radioactive substance involved in the work; (4) the identity of any person engaged in the work; (5) the date of commencement and the duration of any period over which the work is carried on; (6) the location and description of any premises at which the work is carried out on each occasion that it is so carried out; (7) the date of termination of the work; (8) further information on any of the particulars listed in Sch 2: Sch 3.

15 Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(3). A notice under reg 6(3) may require the radiation employer to notify the Executive of any of the particulars specified in Sch 3 before each occasion on which he commences work with ionising radiation: reg 6(4).

16 Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(5).

17 Ionising Radiations Regulations 1999, SI 1999/3232, reg 6(6).

18 For these purposes, unless the context otherwise requires, any reference to an employee includes a reference to (1) a self-employed person; and (2) a trainee who but for the operation of this provision and reg 2(3) would not be classed as an employee: reg 2(2)(b). For these purposes and the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), a trainee is, while he is undergoing instruction or training in respect of work with ionising radiation, to be treated as the employee of the person whose undertaking (whether for profit or not) is providing that instruction or training and that person is to be treated as the employer of that trainee except that the duties to the trainee imposed upon the person providing instruction or training only extend to matters under the control of that person: reg 2(3)(b). 'Trainee' means a person aged 16 years or over (including a student) who is undergoing instruction or training which involves operations which would, in the case of an employee, be work with ionising radiation: reg 2(1).

19 Ionising Radiations Regulations 1999, SI 1999/3232, reg 7(1). For these purposes, unless the context otherwise requires, any reference to exposure to ionising radiation is a reference to exposure to ionising radiation arising from work with ionising radiation: reg 2(2)(c). Any duty imposed by the 1999 regulations on an employer in respect of the exposure to ionising radiation of persons other than his employees is to be imposed only in so far as the exposure of those persons to ionising radiation arises from work with ionising radiation undertaken by that employer: reg 4(1). The requirements of reg 7 are without prejudice to the requirements of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, relating to risk assessment (see PARA 429): Ionising Radiations Regulations 1999, SI 1999/3232, reg 7(4); Interpretation Act 1978 s 17(2). As to the duties imposed on employees see PARA 653.

In any proceedings against an employer for an offence under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 7, it is a defence for that employer to prove that (1) he neither knew nor had reasonable cause to believe that he had commenced a new activity involving work with ionising radiation; and (2) in a case where he had discovered that he had commenced a new activity involving work with ionising radiation, he had as soon

as practicable made an assessment as required by reg 7: reg 36(2). As to offences due to the default of other persons see reg 36(7); and PARA 859.

20 'Radiation accident' means an accident where immediate action would be required to prevent or reduce the exposure to ionising radiation of employees or any other persons: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

21 Ionising Radiations Regulations 1999, SI 1999/3232, reg 7(2). Where an assessment made in accordance with reg 7 shows that a radiation accident is reasonably foreseeable (having regard to the steps taken by the radiation employer under reg 7(3): see the text to note 22), the radiation employer must prepare a contingency plan designed to secure, so far as is reasonably practicable, the restriction of exposure to ionising radiation and the health and safety of persons who may be affected by such accident: reg 12(1). The radiation employer must ensure that (1) where local rules are required for the purposes of reg 17 (see PARA 650), a copy of the contingency plan made in pursuance of reg 12(1) is identified in those rules and incorporated into them by way of summary or reference; (2) any employee under his control who may be involved with or may be affected by arrangements in the plan has been given suitable and sufficient instructions and where appropriate issued with suitable dosimeters or other devices obtained in either case from the approved dosimetry service with which the radiation employer has entered into an arrangement under reg 21 (see PARA 651); and (3) where appropriate, rehearsals of the arrangements in the plan are carried out at suitable intervals: reg 12(2).

22 Ionising Radiations Regulations 1999, SI 1999/3232, reg 7(3).

23 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(1). Where it is appropriate to do so at the planning stage of radiation protection, dose constraints must be used in restricting exposure to ionising radiation pursuant to reg 8(1): reg 8(3). 'Dose constraint' means a restriction on the prospective doses to individuals which may result from a defined source: reg 2(1).

24 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(2)(a). A radiation employer who provides any engineering control, design feature, safety feature or warning device to meet the requirements of reg 8(2)(a) must ensure (1) that any such control, feature or device is properly maintained; and (2) where appropriate, that thorough examinations and tests of such controls, features or devices are carried out at suitable intervals: reg 10(1).

25 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(2)(b). An employer who provides any system of work or personal protective equipment pursuant to reg 8 must take all reasonable steps to ensure that it is properly used or applied as the case may be: reg 8(4).

26 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(2)(c). See also note 25. Every radiation employer must ensure that all personal protective equipment provided pursuant to reg 8 is, where appropriate, thoroughly examined at suitable intervals and is properly maintained and that, in the case of respiratory protective equipment, a suitable record of that examination is made and kept for at least two years from the date on which the examination was made and that the record includes a statement of the condition of the equipment at the time of the examination: reg 10(2). 'Maintained', where the reference is to maintaining plant, apparatus, equipment or facilities, means maintained in an efficient state, in efficient working order and good repair: reg 2(1).

Any personal protective equipment provided by an employer pursuant to reg 8 must comply with any provision in the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARA 567) which is applicable to that item of personal protective equipment; and where in the case of respiratory protective equipment no provision of those regulations applies, that respiratory protective equipment will satisfy the requirements of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 8 only if it is of a type, or conforms to a standard, approved in either case by the Executive: reg 9(1), (2); Interpretation Act 1978 s 17(2). Every radiation employer must ensure that appropriate accommodation is provided for personal protective equipment when it is not being worn: Ionising Radiations Regulations 1999, SI 1999/3232, reg 9(3).

27 Ie the requirements of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(1).

28 For these purposes, any reference to an effective dose means the sum of the effective dose to the whole body from external radiation and the committed effective dose from internal radiation: reg 2(6)(a).

29 'Calendar year' means a period of 12 calendar months beginning with 1 January: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

30 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(7). The lower effective dose must be specified in writing in local rules made pursuant to reg 17(1) (see PARA 650) or, where local rules are not required, by other suitable means: reg 8(7).

31 Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(5). Nothing in reg 8(5), however, requires the radiation employer to take any action in relation to an employee until she has notified her employer in writing

that she is pregnant or breastfeeding and the radiation employer has been made aware, or should reasonably have been expected to be aware, of that fact: reg 8(6).

'Contamination' means the contamination by any radioactive substance of any surface (including any surface of the body or clothing) or any part of absorbent objects or materials or the contamination of liquids or gases by any radioactive substance: reg 2(1).

32 le subject to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 11(2) (see note 35) and to Sch 4 para 5 (see note 34): reg 11(1).

33 le of a class specified in the Ionising Radiations Regulations 1999, SI 1999/3232, reg 11(1), Sch 4: see note 34.

34 le specified in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 Pt I (paras 1-8). For the purposes of reg 11(1): (1) the limit on effective dose for any employee of 18 years of age or above is 20 mSv in any calendar year; and without prejudice to this, (a) the limit on equivalent dose for the lens of the eye is 150 mSv in a calendar year; (b) the limit on equivalent dose for the skin is 500 mSv in a calendar year as applied to the dose averaged over any area of 1 cm<sup>2</sup> regardless of the area exposed; and (c) the limit on equivalent dose for the hands, forearms, feet and ankles is 500 mSv in a calendar year; (2) the limit on effective dose for any trainee under 18 years of age is 6 mSv in any calendar year; and without prejudice to this (a) the limit on equivalent dose for the lens of the eye is 50 mSv in a calendar year; (b) the limit on equivalent dose for the skin is 150 mSv in a calendar year as applied to the dose averaged over any area of 1 cm<sup>2</sup> regardless of the area exposed; (c) the limit on equivalent dose for the hands, forearms, feet and ankles is 150 mSv in a calendar year; (3) without prejudice to heads (1) and (2)(a)-(c) above, the limit on equivalent dose for the abdomen of a woman of reproductive capacity who is at work, being the equivalent dose from external radiation resulting from exposure to ionising radiation averaged throughout the abdomen, is 13 mSv in any consecutive period of three months; (4) subject as follows, the limit on effective dose for any person other than an employee or trainee referred to in head (1) or head (2)(a)-(c) above, including any person below the age of 16, is 1 mSv in any calendar year; but this does not apply in relation to any person (not being a comforter or carer) who may be exposed to ionising radiation resulting from the medical exposure of another and in such a case the limit on effective dose for any such person is 5 mSv in any period of five consecutive calendar years; (5) without prejudice to head (4) above, (a) the limit on equivalent dose for the lens of the eye is 15 mSv in any calendar year; (b) the limit on equivalent dose for the skin is 50 mSv in any calendar year averaged over any 1 cm<sup>2</sup> area regardless of the area exposed; (c) the limit on equivalent dose for the hands, forearms, feet and ankles is 50 mSv in a calendar year: Sch 4 Pt I (paras 1-8) (amended by SI 2001/2975). 'Dose limit' means, in relation to persons of a specified class, the limit on effective dose or equivalent dose specified in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 in relation to a person of that class: reg 2(1). For these purposes, any reference to equivalent dose to a human tissue or organ includes the committed equivalent dose to that tissue or organ from internal radiation: reg 2(6)(b). 'Internal radiation' means, in relation to a person, ionising radiation coming from inside the body of that person: reg 2(1).

'Woman of reproductive capacity' means a woman who is made subject to the additional dose limit for a woman of reproductive capacity specified in Sch 4 para 5 (see head (3) above) and Sch 4 para 11 (see note 35 head (2)) by an entry in her health record made by an appointed doctor or employment medical adviser; 'health record' means, subject to reg 39(7) (which relates to transitional provisions), in relation to an employee, the record of medical surveillance of that employee maintained by the employer in accordance with reg 24(3) (see PARA 651); 'appointed doctor' means, subject to reg 39(5) (which relates to transitional provisions), a registered medical practitioner who is for the time being appointed in writing by the Executive for the purposes of the 1999 regulations; and 'employment medical adviser' means an employment medical adviser appointed under the Health and Safety at Work etc Act 1974 s 56 (see PARA 384): Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

35 Ionising Radiations Regulations 1999, SI 1999/3232, reg 11(1). Where an employer is able to demonstrate in respect of any employee that the dose limit specified in Sch 4 Pt I para 1 (see note 34 head (1), excluding head (1)(a)-(c)) is impracticable having regard to the nature of the work undertaken by that employee, the employer may in respect of that employee apply the dose limits set out in Sch 4 paras 9-11 and in such case the provisions of Sch 4 Pt II (paras 9-22) have effect: reg 11(2). For the purposes of reg 11(2), the limit on effective dose for employees of 18 years or above is 100 mSv in any period of five consecutive calendar years subject to a maximum effective dose of 50 mSv in any single calendar year: Sch 4 para 9. Without prejudice to this, (1) the limit on equivalent dose for the lens of the eye is 150 mSv in a calendar year, the limit on equivalent dose for the skin is 500 mSv in a calendar year as applied to the dose averaged over any area of 1 cm<sup>2</sup> regardless of the area exposed and the limit on equivalent dose for the hands, forearms, feet and ankles is 500 mSv in a calendar year (Sch 4 para 10); (2) the limit on equivalent dose for the abdomen of a woman of reproductive capacity who is at work, being the equivalent dose from external radiation resulting from exposure to ionising radiation averaged throughout the abdomen, is 13 mSv in any consecutive period of three months (Sch 4 para 11). The employer must ensure that any employee in respect of whom reg 11(2) applies is not exposed to ionising radiation to an extent that any dose limit specified in Sch 4 paras 9-11 is exceeded: Sch 4 para 12.

An employer may not put into effect a system of dose limitation in pursuance of reg 11(2) unless (a) the radiation protection adviser and any employees who are affected have been consulted; (b) any employees affected and the approved dosimetry service have been informed in writing of the decision and of the reasons for that decision; and (c) notice has been given to the Executive at least 28 days (or such shorter period as the Executive may allow) before the decision is put into effect giving the reasons for the decision: Sch 4 para 13. Where there is reasonable cause to believe that any employee has been exposed to an effective dose greater than 20 mSv in any calendar year, the employer must, as soon as is practicable, undertake an investigation into the circumstances of the exposure for the purpose of determining whether the dose limit referred to in Sch 4 para 9 is likely to be complied with, and notify the Executive of that suspected exposure: Sch 4 para 14. An employer must review the decision to put into effect a system of dose limitation pursuant to reg 11(2) at appropriate intervals and in any event not less than once every five years: Sch 4 para 15. Where as a result of a review undertaken pursuant to Sch 4 para 15 an employer proposes to revert to a system of annual dose limitation pursuant to reg 11(1), the provisions of Sch 4 para 13 apply as if the reference therein to reg 11(2) was a reference to reg 11(1): Sch 4 para 16. Where an employer puts into effect a system of dose limitation in pursuance of reg 11(2), he must record the reasons for that decision and must ensure that the record is preserved for a period of 50 years from the date of its making: Sch 4 para 17. In any case where (i) the dose limits specified in Sch 4 para 9 are being applied by a radiation employer in respect of an employee; and (ii) the Executive is not satisfied that it is impracticable for that employee to be subject to the dose limit specified in Sch 4 Pt I para 1, the Executive may require the employer to apply the dose limit specified in Sch 4 Pt I para 1 with effect from such time as the Executive may consider appropriate having regard to the interests of the employee concerned: Sch 4 para 18. In any case where, as a result of a review undertaken pursuant to Sch 4 para 15, an employer proposes to revert to an annual dose limitation in accordance with reg 11(1), the Executive may require the employer to defer the implementation of that decision to such time as the Executive may consider appropriate having regard to the interests of the employee concerned: Sch 4 para 19 (amended by SI 2001/2975).

Any person who is aggrieved by the decision of the Executive taken pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 para 18 or Sch 4 para 19 may appeal to the Secretary of State: Sch 4 para 20. The Health and Safety at Work etc Act 1974 s 44(2)-(6) (see PARA 351) applies for these purposes as it applies to an appeal under s 44(1): Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 para 21. The Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974, SI 1974/2040, as respects England and Wales (see PARA 351), apply to an appeal under the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 para 20 as they apply to an appeal under the Health and Safety at Work etc Act 1974 s 44(1), but with the modification that references to a licensing authority are to be read as references to the Executive: Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 para 22. As to the meaning of 'radiation protection adviser' see PARA 649 note 3; and as to the meaning of 'approved dosimetry service' see PARA 651 note 18.

Regulation 11 is disapplied when there is intervention in the event of a radiation emergency: see the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 15; and PARA 669 note 10.

36 See the Approved Code of Practice on Work with Ionising Radiation (ACOP and Guidance L121). As to codes of practice approved by the Health and Safety Executive see PARA 426.

37 At the date at which this title states the law, full details of published guidance and additional information were accessible on the Health and Safety Executive's internet site at [www.hse.gov.uk](http://www.hse.gov.uk). As to the status of such guidance see PARA 371.



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(2) PROTECTION FROM GENERAL RISKS/(v) Hazardous and Dangerous Substances etc/E. IONISING RADIATION/649. Arrangements for the management of radiation protection.

#### **649. Arrangements for the management of radiation protection.**

Subject to certain exceptions<sup>1</sup>, every radiation employer<sup>2</sup> must consult such suitable radiation protection advisers<sup>3</sup> as are necessary for the purpose of advising the radiation employer as to the observance of the relevant regulations<sup>4</sup> and must, in any event, consult one or more suitable radiation protection advisers with regard to the specified matters<sup>5</sup>. Where a radiation protection adviser is consulted pursuant to these requirements<sup>6</sup>, the radiation employer must appoint that radiation protection adviser in writing and must include in that appointment the scope of the advice which the radiation protection adviser is required to give<sup>7</sup>. The radiation employer must provide any radiation protection adviser appointed by him with adequate information and facilities for the performance of his functions<sup>8</sup>.

Every employer must ensure that:

- 1203 (1) those of his employees<sup>9</sup> who are engaged in work with ionising radiation<sup>10</sup> are given appropriate training in the field of radiation protection and receive such information and instruction as is suitable and sufficient for them to know:
- 145
- 241. (a) the risks to health created by exposure to ionising radiation;
- 242. (b) the precautions which should be taken; and
- 243. (c) the importance of complying with the medical, technical and administrative requirements of the relevant regulations<sup>11</sup>;
- 146
- 1204 (2) adequate information is given to other persons who are directly concerned with the work with ionising radiation carried on by the employer to ensure their health and safety so far as is reasonably practicable<sup>12</sup>; and
- 1205 (3) those female employees of that employer who are engaged in work with ionising radiation are informed of the possible risk arising from ionising radiation to the foetus and to a nursing infant and of the importance of those employees informing the employer in writing as soon as possible:
- 147
- 244. (a) after becoming aware of their pregnancy; or
- 245. (b) if they are breastfeeding<sup>13</sup>.
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Where work with ionising radiation undertaken by one employer is likely to give rise to the exposure to ionising radiation of the employee of another employer, the employers concerned must co-operate by the exchange of information or otherwise to the extent necessary to ensure that each such employer is enabled to comply with the requirements of the relevant regulations<sup>14</sup> in so far as his ability to comply depends upon such co-operation<sup>15</sup>.

1 le subject to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 13(3): see note 5.

2 As to the meaning of 'radiation employer', and as to self-employed persons, see PARA 648 note 1.

3 'Radiation protection adviser' means, subject to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 39(6) (which relates to transitional provisions), an individual who, or a body which, meets such criteria of competence as may from time to time be specified in writing by the Health and Safety Executive: reg 2(1). As to the Health and Safety Executive see PARA 361 et seq.

4 le the observance of the Ionising Radiations Regulations 1999, SI 1999/3232: see PARA 648; the text and notes 1-3, 5-15; and PARA 650 et seq. As to the requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, see PARA 668. See also the Public Information for Radiation Emergencies Regulations 1992, SI 1992/2997 (largely revoked); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1474.

5 Ionising Radiations Regulations 1999, SI 1999/3232, reg 13(1). The specified matters are those matters which are set out in Sch 5: reg 13(1). Nothing in reg 13(1) requires a radiation employer to consult a radiation protection adviser where the only work with ionising radiation undertaken by that employer is work specified in Sch 1 (see PARA 648 note 12): reg 13(3). As to the application of the 1999 regulations see PARA 648; as to enforcement of, and exemptions from, those regulations see PARA 654; and as to the duties imposed on employees see PARA 653.

The matters in respect of which a radiation protection adviser must be consulted by a radiation employer are (1) the implementation of requirements as to controlled and supervised areas; (2) the prior examination of plans for installations and the acceptance into service of new or modified sources of ionising radiation in relation to any engineering controls, design features, safety features and warning devices provided to restrict exposure to ionising radiation; (3) the regular calibration of equipment provided for monitoring levels of ionising radiation and the regular checking that such equipment is serviceable and correctly used; (4) the periodic examination and testing of engineering controls, design features, safety features and warning devices and regular checking of systems of work provided to restrict exposure to ionising radiation: Sch 5 paras 1-4. As to the meaning of 'ionising radiation' see PARA 648 note 1; and as to the meaning of references to exposure to such radiation see PARA 648 note 19. As to controlled and supervised areas see PARA 650.

6 le other than in respect of the observance of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 13(1).

7 Ionising Radiations Regulations 1999, SI 1999/3232, reg 13(2).

8 Ionising Radiations Regulations 1999, SI 1999/3232, reg 13(4).

9 As to 'employees' see PARA 648 note 18.

10 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.

11 le the requirements of the Ionising Radiations Regulations 1999, SI 1999/3232.

12 As to what is reasonably practicable see PARA 417. With regard to heads (1), (2) in the text, in relation to a high-activity source, the appropriate training and adequate information required by the ionising radiations provisions include (1) specific requirements for the safe management of such a source; (2) particular emphasis on the necessary safety requirements in relation to such a source; and (3) specific information on possible consequences of the loss of adequate control of such a source, and such training and information must be repeated at regular intervals and documented, with a view to preparing the employees and other persons referred to in the ionising radiations provisions for such matters: High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 19. As to the meaning of 'high-activity source' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1449.

13 Ionising Radiations Regulations 1999, SI 1999/3232, reg 14.

14 See note 11.

15 Ionising Radiations Regulations 1999, SI 1999/3232, reg 15.

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### **650. Designated areas.**

Every employer<sup>1</sup> must designate as a controlled area any area under his control which has been identified by an assessment made by him<sup>2</sup> as an area in which:

- 1206 (1) it is necessary for any person who enters or works in the area<sup>3</sup> to follow special procedures designed to restrict significant exposure to ionising radiation<sup>4</sup> in that area or prevent or limit the probability and magnitude of radiation accidents<sup>5</sup> or their effects; or
- 1207 (2) any person working in the area is likely to receive an effective dose<sup>6</sup> greater than 6 mSv a year or an equivalent dose greater than three-tenths of any specified relevant dose limit<sup>7</sup> in respect of an employee aged 18 years or above<sup>8</sup>.

An employer must not intentionally create in any area conditions which would require that area to be designated as a controlled area<sup>9</sup> unless that area is for the time being under the control of that employer<sup>10</sup>.

An employer must designate as a supervised area any area under his control, not being an area designated as a controlled area:

- 1208 (a) where it is necessary to keep the conditions of the area under review to determine whether the area should be designated as a controlled area; or
- 1209 (b) in which any person is likely to receive an effective dose greater than 1 mSv a year or an equivalent dose greater than one-tenth of any specified relevant dose limit<sup>11</sup> in respect of an employee aged 18 years or above<sup>12</sup>.

For the purposes of enabling work with ionising radiation<sup>13</sup> to be carried on in accordance with the requirements of the relevant regulations<sup>14</sup>, every radiation employer<sup>15</sup> must, in respect of any controlled area or, where appropriate having regard to the nature of the work carried out there, any supervised area<sup>16</sup>, make and set down in writing such local rules as are appropriate to the radiation risk and the nature of the operations undertaken in that area<sup>17</sup>. The radiation employer must take all reasonable steps to ensure that any local rules so made and which are relevant to the work being carried out are observed<sup>18</sup>. He must ensure that such of those rules so made as are relevant are brought to the attention of those employees<sup>19</sup> and other persons who may be affected by them<sup>20</sup>. The radiation employer must appoint one or more suitable radiation protection supervisors for the purpose of securing compliance with the relevant regulations in respect of work carried out in any area made subject to local rules pursuant to these provisions and must set down in the local rules the names of such individuals so appointed<sup>21</sup>.

Every employer who designates any area as a controlled or supervised area must ensure that any such designated area is adequately described in local rules and that in the case of any controlled area, the area is physically demarcated or, where this is not reasonably practicable<sup>22</sup>, delineated by some other suitable means and that suitable and sufficient signs are displayed in suitable positions indicating that the area is a controlled area, the nature of the radiation sources in that area and the risks arising from such sources<sup>23</sup>. In the case of any supervised area, he must ensure that suitable and sufficient signs giving warning of the supervised area

are displayed, where appropriate, in suitable positions indicating the nature of the radiation sources and the risks arising from such sources<sup>24</sup>.

The employer who has designated an area as a controlled area must not permit any employee or other person to enter or remain in such an area unless that employee or other person:

- 1210 (i) being a person other than an outside worker<sup>25</sup>, is a classified person<sup>26</sup>;
- 1211 (ii) being an outside worker, is a classified person in respect of whom the employer has taken all reasonable steps to ensure that the person is subject to individual dose assessment<sup>27</sup>, has been provided with and has been trained to use any personal protective equipment that may be necessary<sup>28</sup>, has received any specific training required<sup>29</sup> and has been certified fit for the work with ionising radiation which he is to carry out<sup>30</sup>; or
- 1212 (iii) not being a classified person, enters or remains in the area in accordance with suitable written arrangements for the purpose of ensuring that in the case of an employee aged 18 years or over, he does not receive in any calendar year<sup>31</sup> a cumulative dose of ionising radiation which would require that employee to be designated as a classified person or, in the case of any other person, he does not receive in any calendar year a dose of ionising radiation exceeding any relevant dose limit<sup>32</sup>.

An employer who has designated an area as a controlled area must, in relation to an outside worker, ensure that:

- 1213 (A) the outside worker is subject to arrangements for estimating the dose of ionising radiation he receives whilst in the controlled area;
- 1214 (B) as soon as is reasonably practicable after the services carried out by that outside worker in that controlled area are completed, an estimate of the dose received by that worker is entered into his radiation passbook<sup>33</sup>; and
- 1215 (C) when the radiation passbook of the outside worker is in the possession of that employer, the passbook is made available to that worker upon request<sup>34</sup>.

In any case where there is a significant risk of the spread of radioactive contamination<sup>35</sup> from a controlled area, the employer who has designated that area as a controlled area must make adequate arrangements to restrict, so far as is reasonably practicable, the spread of such contamination<sup>36</sup>.

Every employer who designates an area as a controlled or supervised area must take such steps as are necessary, otherwise than by use of assessed doses of individuals, having regard to the nature and extent of the risks resulting from exposure to ionising radiation, to ensure that levels of ionising radiation are adequately monitored for each such area and that working conditions in those areas are kept under review<sup>37</sup>. The employer upon whom a duty is so imposed must provide suitable and sufficient equipment for carrying out the monitoring so required<sup>38</sup>. That equipment must be properly maintained<sup>39</sup> so that it remains fit for the purpose for which it was intended and must be adequately tested and examined at appropriate intervals<sup>40</sup>. That employer must make suitable records of the results of the monitoring and the tests carried out in accordance with these requirements<sup>41</sup>. He must ensure that the records of the tests carried out are authorised by a qualified person<sup>42</sup> and must keep those records, or copies of them, for at least two years from the respective dates on which they were made<sup>43</sup>.

1 As to self-employed persons see PARA 648 note 1.

2 Ie whether pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 7 (see PARA 648) or otherwise: reg 16(1).

3 For these purposes, unless the context otherwise requires, any reference to a person entering, remaining in or working in a controlled or supervised area includes a reference to any part of a person entering, remaining in or working in any such area: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(2)(d).

4 As to the meaning of 'ionising radiation' see PARA 648 note 1; and as to the meaning of references to exposure to such radiation see PARA 648 note 19.

5 As to the meaning of 'radiation accident' see PARA 648 note 20.

6 As to the meaning of references to an effective dose see PARA 648 note 28.

7 Ie any dose limit referred to in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4: see PARA 648. As to the meaning of 'dose limit' see PARA 648 note 34.

8 Ionising Radiations Regulations 1999, SI 1999/3232, reg 16(1). As to the application of the 1999 regulations see PARA 648; as to enforcement of, and exemptions from, those regulations see PARA 654; and as to the duties imposed on employees see PARA 653.

9 'Controlled area' means (1) in the case of an area situated in Great Britain, an area which has been so designated in accordance with reg 16(1); and (2) in the case of an area situated in Northern Ireland or in another member state, an area subject to special rules for the purposes of protection against ionising radiation and to which access is controlled as specified in Euratom Council Directive 96/29 (OJ L159, 29.06.1996, p 1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ('the Directive'), art 19: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1). The United Kingdom government has been held to have failed to fulfil its obligations under that directive by not implementing it in regulations applying to Gibraltar: see Case C-218/02 *EC Commission v United Kingdom* [2004] ECR I-1241, [2004] All ER (D) 11 (Feb), ECJ.

10 Ionising Radiations Regulations 1999, SI 1999/3232, reg 16(2).

11 See note 7.

12 Ionising Radiations Regulations 1999, SI 1999/3232, reg 16(3).

13 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.

14 Ie the requirements of the Ionising Radiations Regulations 1999, SI 1999/3232: see PARAS 648-649; the text and notes 1-13, 15-43; and PARA 651 et seq.

15 As to the meaning of 'radiation employer', and as to self-employed persons, see PARA 648 note 1.

16 'Supervised area' means an area which has been so designated by the employer in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 16(3): reg 2(1).

17 Ionising Radiations Regulations 1999, SI 1999/3232, reg 17(1). As to the meaning of 'local rules' see PARA 648 note 1.

18 Ionising Radiations Regulations 1999, SI 1999/3232, reg 17(2).

19 As to 'employees' see PARA 648 note 18.

20 Ionising Radiations Regulations 1999, SI 1999/3232, reg 17(3).

21 Ionising Radiations Regulations 1999, SI 1999/3232, reg 17(4).

22 As to what is reasonably practicable see PARA 417.

23 Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(1)(a).

24 Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(1)(b).

25 'Outside worker' means a classified person who carries out services in the controlled area of any employer, other than the controlled area of his own employer: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1). As to the meaning of 'classified person' see note 26.

26 'Classified person' means (1) a person designated as such pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 20(1) (see PARA 651); and (2) in the case of an outside worker employed by an undertaking in Northern Ireland or in another member state, a person who has been designated as a Category A

exposed worker within the meaning of art 21 of the Directive (see note 9): Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

27 le pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21: see PARA 651.

28 le pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(2)(c): see PARA 648.

29 le pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 14: see PARA 649.

30 le pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 24: see PARA 651.

31 As to the meaning of 'calendar year' see PARA 648 note 29.

32 Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(2). An employer who has designated an area as a controlled area must not permit a person to enter or remain in such area in accordance with the written arrangements under reg 18(2)(c) (see head (iii) in the text), unless he can demonstrate, by personal dose monitoring or other suitable measurements, that the doses are restricted in accordance with that provision: reg 18(3). The employer who carries out the monitoring or measurements pursuant to reg 18(3) must keep the results of the monitoring or measurements referred to therein for a period of two years from the date they were recorded and must, at the request of the person to whom the monitoring or measurements relate and on reasonable notice being given make the results available to that person: reg 18(5).

Nothing in the 1999 regulations is to be construed as preventing a person from entering or remaining in a controlled area or a supervised area where that person enters or remains in any such area (1) in the due exercise of a power of entry conferred on him by or under any enactment; or (2) for the purpose of undergoing a medical exposure: reg 2(5). As to the meaning of 'medical exposure' see PARA 648 note 4.

33 'Radiation passbook' means (1) in the case of an outside worker employed by an employer in Great Britain, (a) a passbook approved by the Executive for the purpose of the 1999 regulations; or (b) a passbook to which reg 39(4) (transitional provisions) applies; and (2) in the case of an outside worker employed by an employer in Northern Ireland or in another member state, a passbook authorised by the competent authority for Northern Ireland or that member state, as the case may be: Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(1).

34 Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(4).

35 As to the meaning of 'contamination' see PARA 648 note 31.

36 Ionising Radiations Regulations 1999, SI 1999/3232, reg 18(6). Without prejudice to the generality of reg 18(6), the arrangements required by that provision must, where appropriate, include (1) the provision of suitable and sufficient washing and changing facilities for persons who enter or leave any controlled or supervised area; (2) the proper maintenance of such washing and changing facilities; (3) the prohibition of eating, drinking or smoking or similar activity likely to result in the ingestion of a radioactive substance by any employee in a controlled area; and (4) the means for monitoring for contamination any person, article or goods leaving a controlled area: reg 18(7).

37 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(1).

38 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(2). Equipment provided pursuant to reg 19(2) is not to be or remain suitable unless (1) the performance of the equipment has been established by adequate tests before it has first been used; and (2) the tests and examinations carried out pursuant to reg 19(2) and to head (1) above have been carried out by or under the supervision of a qualified person: reg 19(3).

39 As to the meaning of 'maintained' see PARA 648 note 26.

40 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(2)(a), (b).

41 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(4)(a).

42 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(4)(b).

43 Ionising Radiations Regulations 1999, SI 1999/3232, reg 19(4)(c).

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### **651. Classification and monitoring of persons.**

The employer<sup>1</sup> may not designate an employee<sup>2</sup> as a classified person<sup>3</sup> unless that employee is aged 18 years or over and an appointed doctor<sup>4</sup> or employment medical adviser<sup>5</sup> has certified in the health record<sup>6</sup> that that employee is fit for the work with ionising radiation<sup>7</sup> which he is to carry out<sup>8</sup>. Subject to that, the employer must designate as classified persons those of his employees who are likely to receive an effective dose<sup>9</sup> in excess of 6 mSv per year or an equivalent dose<sup>10</sup> which exceeds three-tenths of any relevant dose limit<sup>11</sup> and must forthwith inform those employees that they have been so designated<sup>12</sup>. The employer may cease to treat an employee as a classified person only at the end of a calendar year<sup>13</sup> except where an appointed doctor or employment medical adviser so requires, or where the employee is no longer employed by the same employer in a capacity which is likely to result in significant exposure to ionising radiation<sup>14</sup> during the remainder of the relevant calendar year<sup>15</sup>.

Every employer must ensure that, in respect of each of his employees who is designated as a classified person, an assessment is made of all doses<sup>16</sup> of ionising radiation received by such employee which are likely to be significant and that such assessments are recorded<sup>17</sup>. For these purposes, the employer must make suitable arrangements with one or more approved dosimetry service<sup>18</sup> or services for the making of systematic assessments of such doses by the use of suitable individual measurement for appropriate periods or, where individual measurement is inappropriate, by means of other suitable measurements, and for the making and maintenance of dose records<sup>19</sup> relating to each classified person<sup>20</sup>. The arrangements that the employer makes with the approved dosimetry service for these purposes must include requirements for that service:

- 1216 (1) to keep the records made and maintained pursuant to the arrangements or a copy of them until the person to whom the record relates has or would have attained the age of 75 years but in any event for at least 50 years from when they were made;
- 1217 (2) to provide the employer at appropriate intervals with suitable summaries of the dose records maintained in accordance with head (1) above;
- 1218 (3) when required by the employer, to provide him with such copies of the dose record relating to any of his employees as the employer may require;
- 1219 (4) when required by the employer, to make a record of the information concerning the dose assessment<sup>21</sup> relating to a classified person who ceases to be an employee of the employer, and to send that record (a 'termination record') to the Health and Safety Executive<sup>22</sup> and a copy of it to the employer forthwith;
- 1220 (5) within three months, or such longer period as the Executive may agree, of the end of each calendar year to send to the Executive summaries of all current dose records relating to that year;
- 1221 (6) when required by the Executive, to provide it with copies of any dose records;
- 1222 (7) where a dose is estimated<sup>23</sup>, to make an entry in a dose record and retain the summary of the information used to estimate that dose;
- 1223 (8) where the employer employs an outside worker<sup>24</sup>, to provide, where appropriate, a current radiation passbook<sup>25</sup> in respect of that outside worker; and

- 1224 (9) where the employer employs an outside worker who works in Northern Ireland or another member state, to maintain a continuing record of the assessment of the dose received by that outside worker when working in such place<sup>26</sup>.

The employer must provide the approved dosimetry service with such information concerning his employees as is necessary for the approved dosimetry service to comply with the arrangements made for these purposes<sup>27</sup>.

An employer must:

- 1225 (a) ensure that each outside worker employed by him is provided with a current individual radiation passbook which is not to be transferable to any other worker and in which must be entered the specified particulars<sup>28</sup>; and  
 1226 (b) make suitable arrangements to ensure that the particulars entered in the radiation passbook are kept up-to-date during the continuance of the employment of the outside worker by that employer<sup>29</sup>.

The employer must, at the request of a classified person employed by him (or of a person formerly employed by him as a classified person) and on reasonable notice being given, obtain where necessary from the approved dosimetry service and make available to that person:

- 1227 (i) a copy of the dose summary provided<sup>30</sup> relating to that person and made within a period of two years preceding the request; and  
 1228 (ii) a copy of the dose record of that person<sup>31</sup>.

When a classified person ceases to be employed by the employer, the employer must take all reasonable steps to provide to that person a copy of his termination record<sup>32</sup>.

The employer must keep a copy of the summary of the dose record received from the approved dosimetry service for at least two years from the end of the calendar year to which the summary relates<sup>33</sup>.

Where any accident or other occurrence takes place which is likely to result in a person receiving an effective dose of ionising radiation exceeding 6 mSv or an equivalent dose greater than three-tenths of any relevant dose limit, the employer must, in the case of a classified person, arrange for a dose assessment to be made by the approved dosimetry service forthwith<sup>34</sup>. In the case of an employee to whom a dosimeter or other device has been issued<sup>35</sup>, the employer must arrange for that dosimeter or device to be examined and for the dose received to be assessed by the approved dosimetry service as soon as possible<sup>36</sup>; and in any other case, he must arrange for the dose to be assessed by an appropriate means as soon as possible, having regard to the advice of the radiation protection adviser<sup>37</sup>. In such a case, the employer must take all reasonably practicable steps to inform each person for whom a dose assessment has been made of the result of that assessment and must keep a record of the assessment or a copy of it until the person to whom the record relates has or would have attained the age of 75 years but in any event for at least 50 years from the date of the relevant accident<sup>38</sup>.

The employer must ensure that each of his employees who are:

- 1229 (A) classified persons and persons whom an employer intends to designate as classified persons;  
 1230 (B) employees who have received an overexposure<sup>39</sup> and are not classified persons;



1231 (c) employees who are engaged in work with ionising radiation subject to conditions imposed<sup>40</sup> by an appointed doctor or employment medical adviser,

is under adequate medical surveillance by an appointed doctor or employment medical adviser for the purpose of determining the fitness of each employee for the work with ionising radiation which he is to carry out<sup>41</sup>.

- 1 As to self-employed persons see PARA 648 note 1.
- 2 As to 'employees' see PARA 648 note 18.
- 3 As to the meaning of 'classified person' see PARA 650 note 26.
- 4 As to the meaning of 'appointed doctor' see PARA 648 note 34.
- 5 As to the meaning of 'employment medical adviser' see PARA 648 note 34.
- 6 As to the meaning of 'health record' see PARA 648 note 34.
- 7 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.
- 8 Ionising Radiations Regulations 1999, SI 1999/3232, reg 20(2). As to the application of the 1999 regulations see PARA 648; as to enforcement of, and exemptions from, those regulations see PARA 654; and as to the duties imposed on employees see PARA 653.
- 9 As to the meaning of 'effective dose' see PARA 648 note 28.
- 10 As to the meaning of 'equivalent dose' PARA 648 note 34.
- 11 As to the meaning of 'dose limit' see PARA 648 note 34.
- 12 Ionising Radiations Regulations 1999, SI 1999/3232, reg 20(1).
- 13 As to the meaning of 'calendar year' see PARA 648 note 29.
- 14 As to the meaning of references to exposure to ionising radiation see PARA 648 note 19.
- 15 Ionising Radiations Regulations 1999, SI 1999/3232, reg 20(3).
- 16 As to the meaning of 'dose' see PARA 648 note 12.
- 17 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(1).
- 18 'Approved dosimetry service' means, subject to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 39(3) (which relates to transitional provisions), a dosimetry service approved in accordance with reg 35: reg 2(1). As to the meaning of 'approved' see PARA 648 note 7. The Health and Safety Executive (or such other person as may from time to time be specified in writing by the Executive) may, by a certificate in writing, approve (in accordance with such criteria as may from time to time be specified by the Executive) a suitable dosimetry service for such of the purposes of the 1999 regulations or of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975 (see PARA 668) as are specified in the certificate: Ionising Radiations Regulations 1999, SI 1999/3232, reg 35(1) (amended by SI 2001/2975). A certificate so made may be made subject to conditions and may be revoked in writing at any time: Ionising Radiations Regulations 1999, SI 1999/3232, reg 35(2). The Executive (or such other person as may from time to time be specified in writing by the Executive) may at such suitable periods as it considers appropriate carry out a re-assessment of any approval granted pursuant to reg 35(1): reg 35(3).
- 19 'Dose record' means, in relation to a person, the record of the doses received by that person as a result of his exposure to ionising radiation, being the record made and maintained on behalf of the employer by the approved dosimetry service in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21: reg 2(1).
- 20 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(2).
- 21 'Dose assessment' means the dose assessment made and recorded by an approved dosimetry service in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21: reg 2(1).

22 As to the Health and Safety Executive see PARA 361 et seq.

23 In pursuance of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 22. Where a dosimeter or other device is used to make any individual measurement under reg 21(2) and that dosimeter or device is lost, damaged or destroyed or it is not practicable to assess the dose received by a classified person over any period, the employer must make an adequate investigation of the circumstances of the case with a view to estimating the dose received by that person during that period and either (1) in a case where there is adequate information to estimate the dose received by that person, must send to the approved dosimetry service an adequate summary of the information used to estimate that dose and must arrange for the approved dosimetry service to enter the estimated dose in the dose record of that person; or (2) in a case where there is inadequate information to estimate the dose received by the classified person, must arrange for the approved dosimetry service to enter a notional dose in the dose record of that person which must be the proportion of the total annual dose limit for the relevant period, and in either case the employer must take reasonable steps to inform the classified person of that entry and arrange for the approved dosimetry service to identify the entry in the dose record as an estimated dose or a notional dose as the case may be: reg 22(1). The employer must, at the request of the classified person (or a person formerly employed by that employer as a classified person) to whom the investigation so made relates and on reasonable notice being given, make available to that person a copy of the summary sent to the approved dosimetry service under head (1) above: reg 22(2).

Subject to reg 22(5), (8), where an employer has reasonable cause to believe that the dose received by a classified person is much greater or much less than that shown in the relevant entry of the dose record, he must make an adequate investigation of the circumstances of the exposure of that person to ionising radiation and, if that investigation confirms his belief, the employer must, where there is adequate information to estimate the dose received by the employee, (a) send to the approved dosimetry service an adequate summary of the information used to estimate that dose; (b) arrange for the approved dosimetry service to enter that estimated dose in the dose record of that person and for the approved dosimetry service to identify the estimated dose in the dose record as a special entry; and (c) notify the classified person accordingly: reg 22(3). The employer must make a report of any investigation so carried out and must preserve a copy of that report for a period of two years from the date it was made: reg 22(4). Regulation 22(3) does not apply (i) in respect of a classified person subject only to an annual dose limit, more than 12 months after the original entry was made in the record; and (ii) in any other case, more than five years after the original entry was made in the record: reg 22(5). Where a classified person is aggrieved by a decision to replace a recorded dose by an estimated dose pursuant to reg 22(3) he may, by an application in writing to the Executive made within three months of the date on which he was notified of the decision, apply for that decision to be reviewed: reg 22(6). Where the Executive concludes (whether as a result of a review carried out pursuant to reg 22(6) or otherwise) that there is reasonable cause to believe the investigation carried out pursuant to reg 22(3) was inadequate, or that a reasonable estimated dose has not been established, the employer must, if so directed by the Executive, re-instate the original entry in the dose record: reg 22(7). The employer must not, without the consent of the Executive, require the approved dosimetry service to enter an estimated dose in the dose record in any case where: (A) the cumulative recorded effective dose is 20 mSv or more in one calendar year; or (B) the cumulative recorded equivalent dose for the calendar year exceeds a relevant dose limit: reg 22(8).

24 As to the meaning of 'outside worker' see PARA 650 note 25.

25 As to the meaning of 'radiation passbook' see PARA 650 note 33.

26 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(3) (amended by SI 2001/2975).

In the case of an outside worker (working in a controlled area situated in Great Britain) employed by an employer established in Northern Ireland or in another member state, it is sufficient compliance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21 (dose assessment and recording) and reg 24 (medical surveillance) if the employer complies with (1) where the employer is established in Northern Ireland, the relevant Northern Ireland regulations; or (2) where the employer is established in another member state, the legislation in that state implementing Chapters II and III of Title VI of the Directive where such legislation exists: Ionising Radiations Regulations 1999, SI 1999/3232, reg 3(5). As to 'the Directive' see PARA 650 note 9.

27 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(4).

28 In the particulars set out in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 6. The specified particulars are (1) individual serial number of the passbook; (2) a statement that the passbook has been approved by the Executive for the purpose of the 1999 regulations; (3) date of issue of the passbook by the approved dosimetry service; (4) the name, telephone number and mark of endorsement of the issuing approved dosimetry service; (5) the name, address, telephone and telex/fax number of the employer; (6) full name (surname, forenames), date of birth, gender and national insurance number of the outside worker to whom the passbook has been issued; (7) date of the last medical review of the outside worker and the relevant classification in the health record maintained under reg 24 as fit, fit subject to conditions (which must be specified) or unfit; (8) the relevant dose limits applicable to the outside worker to whom the passbook has been issued; (9) the cumulative dose assessment in mSv for the year to date for the outside worker, external (whole

body, organ or tissue) and/or internal as appropriate and the date of the end of the last assessment period; and (10) in respect of services performed by the outside worker: (a) the name and address of the employer responsible for the controlled area; (b) the period covered by the performance of the services; (c) estimated dose information, which must be, as appropriate (i) an estimate of any whole body effective dose in mSv received by the outside worker; (ii) in the event of non-uniform exposure, an estimate of the equivalent dose in mSv to organs and tissues as appropriate; and (iii) in the event of internal contamination, an estimate of the activity taken in or the committed dose: Sch 6 (paras 1-10).

29 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(5).

30 Ie for the purpose of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(3)(b).

31 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(6)(a).

32 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(6)(b).

33 Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(7).

34 Ionising Radiations Regulations 1999, SI 1999/3232, reg 23(1)(a).

35 Ie in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 12(2): see PARA 648.

36 Ionising Radiations Regulations 1999, SI 1999/3232, reg 23(1)(b).

37 Ionising Radiations Regulations 1999, SI 1999/3232, reg 23(1)(c). As to the meaning of 'radiation protection adviser' see PARA 649 note 3.

38 Ionising Radiations Regulations 1999, SI 1999/3232, reg 23(2). As to reportable diseases, including radiation-induced conditions, see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 3; and PARAS 406-407.

39 'Overexposure' means any exposure of a person to ionising radiation to the extent that the dose received by that person causes a dose limit relevant to that person to be exceeded or, in relation to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 26(2), causes a proportion of a dose limit relevant to any employee to be exceeded: reg 2(1).

Where a radiation employer suspects or has been informed that any person is likely to have received an overexposure as a result of work carried out by that employer, that employer must make an immediate investigation to determine whether there are circumstances which show beyond reasonable doubt that no overexposure could have occurred and, unless this is shown, the radiation employer must (1) as soon as practicable notify the suspected overexposure to the Executive, in the case of an employee of some other employer, to that other employer, and in the case of his own employee, to the appointed doctor or employment medical adviser; (2) as soon as practicable take reasonable steps to notify the suspected overexposure to the person affected; and (3) make or arrange for such investigation of the circumstances of the exposure and an assessment of any relevant dose received as is necessary to determine, so far as is reasonably practicable, the measures, if any, required to be taken to prevent a recurrence of such overexposure and must forthwith notify the results of that investigation and assessment to the persons and authorities mentioned in head (1) above and must in the case of his employee, forthwith notify that employee of the results of the investigation and assessment, or in the case of a person who is not his employee, where the investigation has shown that that person has received an overexposure, take all reasonable steps to notify him of his overexposure: reg 25(1). A radiation employer who makes any investigation pursuant to reg 25(1) must make a report of that investigation and must (a) in respect of an immediate investigation, keep that report or a copy thereof for at least two years from the date on which it was made; and (b) in respect of an investigation made pursuant to head (1) above, keep that report or a copy thereof until the person to whom the record relates has or would have attained the age of 75 years but in any event for at least 50 years from the date on which it was made: reg 25(2). Where the person who received the overexposure is an employee who has a dose record, his employer must arrange for the assessment of the dose received to be entered into that dose record: reg 25(3).

Without prejudice to other requirements of the 1999 regulations and in particular reg 24(6) (see note 41), where an employee has been subjected to an overexposure the following provision (ie reg 26(2)) applies in relation to the employment of that employee on work with ionising radiation during the remainder of the dose limitation period commencing at the end of the personal dose assessment period in which he was subjected to the overexposure: reg 26(1). The employer must ensure that an employee to whom reg 26 relates does not, during the remainder of the dose limitation period, receive a dose of ionising radiation greater than that proportion of any dose limit which is equal to the proportion that the remaining part of the dose limitation period bears to the whole of that period: reg 26(2). The employer must inform an employee who has been subjected to an overexposure of the dose limit which is applicable to that employee for the remainder of the relevant dose limitation period: reg 26(3). For these purposes, 'dose limitation period' means, as appropriate, a calendar year or the period of five consecutive calendar years: reg 26(4).

40 le imposed under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 24(6): see note 41.

41 Ionising Radiations Regulations 1999, SI 1999/3232, reg 24(1), (2). The employer must ensure that a health record, containing the particulars referred to in Sch 7, in respect of each of his employees to whom reg 24 relates is made and maintained and that that record or a copy thereof is kept until the person to whom the record relates has or would have attained the age of 75 years but in any event for at least 50 years from the date of the last entry made in it: reg 24(3). Subject to reg 24(5), the employer must ensure that there is a valid entry in the health record of each of his employees to whom reg 24 relates (other than employees who have received an overexposure and who are not classified persons) made by an appointed doctor or employment medical adviser and an entry in the health record is to valid: (1) for 12 months from the date it was made or treated as made by virtue of reg 24(5); (2) for such shorter period as is specified in the entry by the appointed doctor or employment medical adviser; or (3) until cancelled by an appointed doctor or employment medical adviser by a further entry in the record: reg 24(4). For the purposes of head (1) above, a further entry in the health record of the same employee, where made not less than 11 months nor more than 13 months after the start of the current period of validity, is to be treated as if made at the end of that period: reg 24(5).

The following particulars must be contained in a health record made for the purposes of reg 24(3): (a) the employee's (i) full name; (ii) sex; (iii) date of birth; (iv) permanent address; and (v) National Insurance number; (b) the date of the employee's commencement as a classified person in present employment; (c) the nature of the employee's employment; (d) in the case of a female employee, a statement as to whether she is likely to receive in any consecutive period of three months an equivalent dose of ionising radiation for the abdomen exceeding 13 mSv; (e) the date of last medical examination or health review carried out in respect of the employee; (f) the type of the last medical examination or health review carried out in respect of the employee; (g) a statement by the appointed doctor or employment medical adviser made as a result of the last medical examination or health review carried out in respect of the employee classifying the employee as fit, fit subject to conditions (which should be specified) or unfit; (h) in the case of a female employee in respect of whom a statement has been made under head (d) above to the effect that she is likely to receive in any consecutive period of three months an equivalent dose of ionising radiation for the abdomen exceeding 13 mSv, a statement by the appointed doctor or employment medical adviser certifying whether in his professional opinion the employee should be subject to the additional dose limit specified in Sch 4 paras 5, 11 (see PARA 648 notes 34-35); (i) in relation to each medical examination and health review, the name and signature of the appointed doctor or employment medical adviser; (j) the name and address of the approved dosimetry service with whom arrangements have been made for maintaining the dose record in accordance with reg 21: Sch 7.

Where the appointed doctor or employment medical adviser has certified in the health record of an employee to whom reg 24 relates that in his professional opinion that employee should not be engaged in work with ionising radiation or that he should only be so engaged under conditions he has specified in the health record, the employer must not permit that employee to be engaged in the work with ionising radiation except in accordance with the conditions, if any, so specified: reg 24(6). Where, for the purpose of carrying out his functions under the 1999 regulations, an appointed doctor or employment medical adviser requires to inspect any workplace, the employer must permit him to do so: reg 24(7). The employer must make available to the appointed doctor or employment medical adviser the summary of the dose record kept by the employer pursuant to reg 21(7) and such other records kept for the purposes of the 1999 regulations as the appointed doctor or employment medical adviser may reasonably require: reg 21(8).

Where an employee is aggrieved by a decision recorded in the health record by an appointed doctor or employment medical adviser he may, by an application in writing to the Executive made within three months of the date on which he was notified of the decision, apply for that decision to be reviewed in accordance with a procedure approved for these purposes by the Executive, and the result of that review must be notified to the employee and entered in his health record in accordance with the approved procedure: reg 21(9) (amended by SI 2008/960).

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## **652. Arrangements for the control of radioactive substances, articles and equipment.**

No person must intentionally or recklessly misuse or without reasonable excuse interfere with any radioactive substance<sup>1</sup> or any electrical equipment to which the relevant regulations<sup>2</sup> apply<sup>3</sup>.

Where a radioactive substance is used as a source of ionising radiation<sup>4</sup> in work with ionising radiation<sup>5</sup>, the radiation employer<sup>6</sup> must ensure that, whenever reasonably practicable<sup>7</sup>, the substance is in the form of a sealed source<sup>8</sup>. The radiation employer must ensure that the design, construction and maintenance<sup>9</sup> of any article containing or embodying a radioactive substance, including its bonding, immediate container or other mechanical protection, is such as to prevent the leakage of any radioactive substance in the case of a sealed source, so far as is practicable<sup>10</sup>, or in the case of any other article, so far as is reasonably practicable<sup>11</sup>. Where appropriate, the radiation employer must ensure that suitable tests are carried out at suitable intervals to detect leakage of radioactive substances from any article to which the above provision applies<sup>12</sup>. The employer must make a suitable record of each such test and must retain that record for at least two years after the article is disposed of or until a further record is made following a subsequent test to that article<sup>13</sup>.

For the purpose of controlling radioactive substances which are involved in work with ionising radiation which he undertakes, every radiation employer must take such steps as are appropriate to account for and keep records of the quantity and location of those substances. He must keep those records or a copy of them for at least two years from the date on which they were made and, in addition, for at least two years from the date of disposal of that radioactive substance<sup>14</sup>.

Every radiation employer must ensure, so far as is reasonably practicable, that any radioactive substance under his control which is not for the time being in use or being moved, transported<sup>15</sup> or disposed of is kept in a suitable receptacle and is kept in a suitable store<sup>16</sup>. Every employer who causes or permits a radioactive substance to be moved (otherwise than by transporting it) must ensure that, so far as is reasonably practicable, the substance is kept in a suitable receptacle, suitably labelled, while it is being moved<sup>17</sup>. Nothing in these provisions, however, applies in relation to a radioactive substance while it is in or on the live body or corpse of a human being<sup>18</sup>.

Every radiation employer must forthwith notify the Health and Safety Executive<sup>19</sup> in any case where a quantity of a radioactive substance which was under his control and which exceeds the quantity specified for that substance<sup>20</sup> has been released or is likely to have been released into the atmosphere as a gas, aerosol or dust or has been spilled or otherwise released in such a manner as to give rise to significant contamination<sup>21</sup>. This requirement is subject to certain exceptions<sup>22</sup>. Where a radiation employer has reasonable cause to believe that a quantity of a radioactive substance which exceeds the quantity specified for that substance<sup>23</sup> and which was under his control is lost or has been stolen, the employer must forthwith notify the Executive of that loss or theft, as the case may be<sup>24</sup>. Where a radiation employer suspects or has been informed that an occurrence notifiable under the above provisions may have occurred, he must make an immediate investigation and, unless that investigation shows that no such occurrence has occurred, he must forthwith make a notification in accordance with the relevant

requirements<sup>25</sup>. A radiation employer who makes any such investigation must make a report of that investigation and must, unless the investigation showed that no such occurrence occurred, keep that report or a copy of it for at least 50 years from the date on which it was made or, in any other case, for at least two years from the date on which it was made<sup>26</sup>.

In the case of articles for use at work<sup>27</sup>, where that work is work with ionising radiation, the relevant statutory provision which imposes general duties on manufacturers etc as regards articles and substances for use at work<sup>28</sup> is modified so that any duty imposed on any person by that provision includes a duty to ensure that any such article is so designed and constructed as to restrict so far as is reasonably practicable the extent to which employees and other persons are or are likely to be exposed to ionising radiation<sup>29</sup>. Where a person erects or installs an article for use at work, being work with ionising radiation, he must:

- 1232 (1) where appropriate, undertake a critical examination of the way in which the article was erected or installed for the purpose of ensuring, in particular, that:
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- 246. (a) the safety features and warning devices operate correctly; and
- 247. (b) there is sufficient protection for persons from exposure to ionising radiation;
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- 1233 (2) consult with the radiation protection adviser<sup>30</sup> appointed by himself or by the radiation employer with regard to the nature and extent of any critical examination and the results of that examination; and
- 1234 (3) provide the radiation employer with adequate information about proper use, testing and maintenance of the article<sup>31</sup>.

Every employer who has to any extent control of any equipment or apparatus which is used in connection with a medical exposure<sup>32</sup> must, having regard to the extent of his control over the equipment, ensure that such equipment is of such design or construction and is so installed and maintained as to be capable of restricting so far as is reasonably practicable the exposure to ionising radiation of any person who is undergoing a medical exposure to the extent that this is compatible with the intended clinical purpose or research objective<sup>33</sup>. An employer who has to any extent control of any radiation equipment<sup>34</sup> which is used for the purpose of diagnosis and which is installed after 1 January 2000<sup>35</sup> must, having regard to the extent of his control over the equipment, ensure that such equipment is provided, where practicable, with suitable means for informing the user of that equipment of the quantity of radiation produced by that equipment during a radiological procedure<sup>36</sup>. Every employer who has to any extent control of any radiation equipment must take all such steps as are reasonably practicable to prevent the failure of any such equipment where such failure could result in an exposure to ionising radiation greater than that intended and to limit the consequences of any such failure<sup>37</sup>. Where a radiation employer suspects or has been informed that an incident may have occurred in which a person while undergoing a medical exposure was, as the result of a malfunction of, or defect in, radiation equipment under the control of that employer, exposed to ionising radiation to an extent much greater than that intended, he must make an immediate investigation of the suspected incident and, unless that investigation shows beyond reasonable doubt that no such incident has occurred, he must forthwith notify the Executive of it and make or arrange for a detailed investigation of the circumstances of the exposure and an assessment of the dose received<sup>38</sup>. A radiation employer who makes any such investigation must make a report of that investigation and must:

- 1235 (i) in respect of an immediate report, keep that report or a copy of it for a period of at least two years from the date on which it was made; and
- 1236 (ii) in respect of a detailed report, keep that report or a copy of it for a period of at least 50 years from the date on which it was made<sup>39</sup>.

- 1 As to the meaning of 'radioactive substance' see PARA 648 note 4.
- 2 Ie the Ionising Radiations Regulations 1999, SI 1999/3232: see PARA 648 et seq; the text and notes 3-38; and PARAS 653-654.
- 3 Ionising Radiations Regulations 1999, SI 1999/3232, reg 33. As to the application of the 1999 regulations see PARA 648; as to enforcement of, and exemptions from, those regulations see PARA 654; and as to the duties imposed on employees see PARA 653.
- 4 As to the meaning of 'ionising radiation' see PARA 648 note 1.
- 5 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.
- 6 As to the meaning of 'radiation employer', and as to self-employed persons, see PARA 648 note 1.
- 7 As to what is reasonably practicable see PARA 417.
- 8 Ionising Radiations Regulations 1999, SI 1999/3232, reg 27(1). As to the meaning of 'sealed source' see PARA 648 note 12.
- 9 As to the meaning of 'maintained' see PARA 648 note 26.
- 10 As to what is practicable, as opposed to what is reasonably practicable, see PARA 417.
- 11 Ionising Radiations Regulations 1999, SI 1999/3232, reg 27(2).
- 12 Ionising Radiations Regulations 1999, SI 1999/3232, reg 27(3).
- 13 See note 12.
- 14 Ionising Radiations Regulations 1999, SI 1999/3232, reg 28.
- 15 As to the meaning of 'transport' see PARA 648 note 4.
- 16 Ionising Radiations Regulations 1999, SI 1999/3232, reg 29(1).
- 17 Ionising Radiations Regulations 1999, SI 1999/3232, reg 29(2).
- 18 Ionising Radiations Regulations 1999, SI 1999/3232, reg 29(3).
- 19 As to the Health and Safety Executive see PARA 361 et seq.
- 20 Ie the quantity specified in the Ionising Radiations Regulations 1999, SI 1999/3232, reg 2(4), Sch 8 col 4. Schedule 8 is not set out in detail in this work.
- 21 Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(1). As to the meaning of 'contamination' see PARA 648 note 31. As to the duty to report the malfunction of radiation generators etc see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 para 8; and PARA 400 head (8).
- 22 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(2). Regulation 30(1) does not apply where such release (1) was in accordance with a registration under the Radioactive Substances Act 1993 s 10 or was exempt from such registration by virtue of s 11; or (2) was in a manner specified in an authorisation to dispose of radioactive waste under s 13 or was exempt from such authorisation by virtue of s 15: Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(2). See further **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1446 et seq, 1474.
- 23 Ie specified in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 8 col 5.
- 24 Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(3).
- 25 Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(4).
- 26 Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(5).
- 27 As to the meaning of 'work' for these purposes see PARA 648 note 1.

28    In the Health and Safety at Work etc Act 1974 s 6(1): see PARA 531.

29    Ionising Radiations Regulations 1999, SI 1999/3232, reg 31(1).

30    As to the meaning of 'radiation protection adviser' see PARA 649 note 3.

31    Ionising Radiations Regulations 1999, SI 1999/3232, reg 31(2).

32    As to the meaning of 'medical exposure' see PARA 648 note 4.

33    Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(1). Every employer in respect of whom a duty is so imposed must, to the extent that it is reasonable for him to do so having regard to the extent of his control over the equipment, make arrangements for a suitable quality assurance programme to be provided in respect of the equipment or apparatus for the purpose of ensuring that it remains capable of restricting so far as is reasonably practicable exposure to the extent that this is compatible with the intended clinical purpose or research objective: reg 32(3). Without prejudice to the generality of reg 32(3), the quality assurance programme so required must require the carrying out of (1) in respect of equipment or apparatus first used after 1 January 2000 (ie the date of the coming into force of reg 32: see reg 1), adequate testing of that equipment or apparatus before it is first used for clinical purposes; (2) adequate testing of the performance of the equipment or apparatus at appropriate intervals and after any major maintenance procedure to that equipment or apparatus; (3) where appropriate, such measurements at suitable intervals as are necessary to enable the assessment of representative doses from any radiation equipment to persons undergoing medical exposures: reg 32(4).

34    For these purposes, 'radiation equipment' means equipment which delivers ionising radiation to the person undergoing a medical exposure and equipment which directly controls the extent of the exposure: Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(8).

35    In the date of the coming into force of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 32: see note 33.

36    Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(2).

37    Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(5).

38    Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(6).

39    Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(7).



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### **653. Duties of employees.**

An employee<sup>1</sup> who is engaged in work with ionising radiation<sup>2</sup> must not knowingly expose himself or any other person to ionising radiation<sup>3</sup> to an extent greater than is reasonably necessary for the purposes of his work, and must exercise reasonable care while carrying out such work<sup>4</sup>.

Every employee who is engaged in work with ionising radiation and for whom personal protective equipment is provided<sup>5</sup> must:

- 1237 (1) make full and proper use of any such personal protective equipment;
- 1238 (2) forthwith report to his employer any defect he discovers in any such personal protective equipment; and
- 1239 (3) take all reasonable steps to ensure that any such personal protective equipment is returned after use to the accommodation provided for it<sup>6</sup>.

It is the duty of every outside worker<sup>7</sup> not to misuse the radiation passbook<sup>8</sup> issued to him or falsify or attempt to falsify any of the information contained in it<sup>9</sup>.

Any employee who is designated as a classified person in respect of whom dose assessments must be made and recorded<sup>10</sup>, or who may be involved with or may be affected by arrangements in the contingency plan<sup>11</sup>, must comply with any reasonable requirement imposed on him by his employer<sup>12</sup> for the purposes of making the required<sup>13</sup> measurements and assessments<sup>14</sup>.

An employee who is subject to medical surveillance<sup>15</sup> must, when required by his employer and at the cost of the employer, present himself during his working hours for such medical examination and tests as may be required for those purposes<sup>16</sup> and must provide the appointed doctor<sup>17</sup> or employment medical adviser<sup>18</sup> with such information concerning his health as the appointed doctor or employment medical adviser may reasonably require<sup>19</sup>.

Where an employee has reasonable cause to believe that:

- 1240 (a) he or some other person has received an overexposure<sup>20</sup>;
- 1241 (b) a specified occurrence<sup>21</sup> has occurred; or
- 1242 (c) a specified incident<sup>22</sup> has occurred,

he must forthwith notify his employer of that belief<sup>23</sup>.

1 As to 'employees' see PARA 648 note 18.

2 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.

3 As to the meaning of 'ionising radiation' see PARA 648 note 1; and as to the meaning of references to exposure to such radiation see PARA 648 note 19.

4 Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(1). As to the application of the 1999 regulations see PARA 648; and as to enforcement of, and exemptions from, those regulations see PARA 654.

- 5    le pursuant to the Ionising Radiations Regulations 1999, SI 1999/3232, reg 8(2)(c): see PARA 648.
- 6    Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(2).
- 7    As to the meaning of 'outside worker' see PARA 650 note 25.
- 8    As to the meaning of 'radiation passbook' see PARA 650 note 33.
- 9    Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(3).
- 10   le an employee to whom the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(1) relates: see PARA 651.
- 11   le an employee to whom the Ionising Radiations Regulations 1999, SI 1999/3232, reg 12(2)(b) relates: see PARA 648.
- 12   As to self-employed persons see PARA 648 note 1.
- 13   le required under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21(1) and reg 23(1): see PARA 651.
- 14   Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(4).
- 15   le under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 24: see PARA 651.
- 16   le for the purposes of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 24(2): see PARA 651.
- 17   As to the meaning of 'appointed doctor' see PARA 648 note 34.
- 18   As to the meaning of 'employment medical adviser' see PARA 648 note 34.
- 19   Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(5).
- 20   As to the meaning of 'overexposure' see PARA 651 note 39.
- 21   le an occurrence mentioned in the Ionising Radiations Regulations 1999, SI 1999/3232, reg 30(1) or (3): see PARA 652.
- 22   le an incident mentioned in the Ionising Radiations Regulations 1999, SI 1999/3232, reg 32(6): see PARA 652.
- 23   Ionising Radiations Regulations 1999, SI 1999/3232, reg 34(6).

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#### **654. Enforcement and exemptions.**

Provision is made for the enforcement of the Ionising Radiations Regulations 1999<sup>1</sup> and for special defences applicable in proceedings for their contravention<sup>2</sup>.

The Health and Safety Executive<sup>3</sup> may, by a certificate in writing, exempt:

- 1243 (1) any person or class of persons;
- 1244 (2) any premises<sup>4</sup> or class of premises; or
- 1245 (3) any equipment, apparatus or substance or class of equipment, apparatus or substance,

from any requirement or prohibition imposed by the relevant regulations<sup>5</sup> and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>6</sup>. The Executive may not, however, grant an exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that:

- 1246 (a) the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it; and
- 1247 (b) compliance with the underlying fundamental radiation protection provisions<sup>7</sup> will be achieved<sup>8</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt:

- 1248 (i) Her Majesty's Forces;
- 1249 (ii) visiting forces<sup>9</sup>;
- 1250 (iii) any member of a visiting force working in or attached to any headquarters or organisation<sup>10</sup>; or
- 1251 (iv) any person engaged in work with ionising radiation<sup>11</sup> for, or on behalf of, the Secretary of State for Defence,

from all or any of the requirements or prohibitions imposed by the relevant regulations<sup>12</sup>. Any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing, except that, where any such exemption is granted, suitable arrangements must be made for the assessment and recording of doses<sup>13</sup> of ionising radiation<sup>14</sup> received by persons to whom the exemption relates<sup>15</sup>.

Certain of the regulations are, in addition, disapplied in relation to persons or organisations listed in heads (i) to (iv) above<sup>16</sup>.

<sup>1</sup> As to the application of the 1999 regulations see PARA 648; and as to the duties imposed on employees see PARA 653.

In so far as any provision of the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21 (see PARA 651) is made under the European Communities Act 1972 s 2(2) (see PARA 340), the Health and Safety at Work etc Act 1974 ss 16-21 (approval of codes of practice and enforcement: see PARAS 372 et seq, 426); s 23 (provisions supplementary to ss 21 and 22) and s 24 (appeal against improvement or prohibition notice), so far as they relate to an improvement notice (see PARA 377); s 26 (power to indemnify inspectors: see PARA 375); and ss 33-42 (provisions as to offences: see PARA 852 et seq), apply to that provision as if that provision had been made under s 15 (see PARA 424): Ionising Radiations Regulations 1999, SI 1999/3232, reg 35A (added by SI 2001/2975).

2 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 36; and PARAS 648, 859 head (3).

3 As to the Health and Safety Executive see PARA 361 et seq.

4 As to the meaning of 'premises' see PARA 302 note 6.

5 le imposed by the Ionising Radiations Regulations 1999, SI 1999/3232: see PARA 648 et seq.

6 Ionising Radiations Regulations 1999, SI 1999/3232, reg 37(1).

7 le the fundamental radiation protection provisions underlying the Ionising Radiations Regulations 1999, SI 1999/3232, regs 8(1), (2)(a), 11, 12(1) (see PARA 648), regs 16(1), (3), 19(1) (see PARA 650), regs 20(1), 21(1), 24(2) (see PARA 651) and reg 32(1) (see PARA 652).

8 Ionising Radiations Regulations 1999, SI 1999/3232, reg 37(2).

9 For these purposes, any reference to 'visiting forces' is a reference to visiting forces within the meaning of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Ionising Radiations Regulations 1999, SI 1999/3232, reg 40(1)(a).

10 For these purposes, any reference to 'headquarters or organisation' is a reference to a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Ionising Radiations Regulations 1999, SI 1999/3232, reg 40(1)(b).

11 As to the meaning of 'work with ionising radiation' see PARA 648 note 12.

12 Ionising Radiations Regulations 1999, SI 1999/3232, reg 40(2).

13 As to the meaning of 'dose' see PARA 648 note 12.

14 As to the meaning of 'ionising radiation' see PARA 648 note 1.

15 See note 12.

16 See the Ionising Radiations Regulations 1999, SI 1999/3232, reg 40(3)-(8).

Regulation 21(3)(i) (see PARA 651 head (9)) does not apply in relation to a practice carried out (1) by or on behalf of the Secretary of State for Defence; (2) by a visiting force; or (3) by any member of a visiting force in or attached to any headquarters or organisation: reg 40(3). As to the meaning of 'practice' see PARA 648 note 4.

Regulations 5 and 6 (see PARA 648) do not apply in relation to work carried out by visiting forces or any headquarters or organisation on premises under the control of such visiting force, headquarters or organisation, as the case may be, or on premises under the control of the Secretary of State for Defence: reg 40(4). The requirements of reg 6 to notify the particulars specified in Sch 2 paras (d) and (e) or any of the particulars specified in Sch 3 do not have effect in any case where the Secretary of State for Defence decides that to do so would be against the interests of national security or where suitable alternative arrangements have been agreed with the Executive: reg 40(5). Regulation 6(4) does not apply to an employer in relation to work with ionising radiation undertaken for or on behalf of the Secretary of State for Defence, visiting forces or any headquarters or organisation: reg 40(6).

Regulations 22(6), (7), (8), 24(9) (see PARA 651) do not apply in relation to visiting forces or any member of a visiting force working in or attached to any headquarters or organisation: reg 40(7). In reg 25(1) (see PARA 651) the requirement to notify the Executive of a suspected overexposure and the results of the consequent investigation and assessment does not apply in relation to the exposure of (a) a member of a visiting force; or (b) a member of a visiting force working in or attached to a headquarters or organisation: reg 40(8). As to the meaning of 'overexposure' see PARA 651 note 39.

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## ***F. USE OF DANGEROUS SUBSTANCES IN THE WORKPLACE***

### **655. Risk assessment.**

Where a dangerous substance<sup>1</sup> is or is liable to be present at the workplace<sup>2</sup>, the employer<sup>3</sup> must make a suitable and sufficient assessment of the risks<sup>4</sup> to his employees<sup>5</sup> which arise from that substance<sup>6</sup>. The risk assessment must include consideration of:

- 1252 (1) the hazardous<sup>7</sup> properties of the substance;
- 1253 (2) information on safety provided by the supplier, including information contained in any relevant safety data sheet<sup>8</sup>;
- 1254 (3) the circumstances of the work including:
  - 151 248. (a) the work processes<sup>9</sup> and substances used and their possible interactions;
  - 249. (b) the amount of the substance involved;
  - 250. (c) where the work will involve more than one dangerous substance, the risk presented by such substances in combination; and
  - 251. (d) the arrangements for the safe handling, storage and transport of dangerous substances and of waste containing dangerous substances;
- 152 1255 (4) activities, such as maintenance, where there is the potential for a high level of risk;
- 1256 (5) the effect of measures which have been or will be taken pursuant to the relevant regulations<sup>10</sup>;
- 1257 (6) the likelihood that an explosive atmosphere<sup>11</sup> will occur and its persistence;
- 1258 (7) the likelihood that ignition sources, including electrostatic discharges, will be present and become active and effective;
- 1259 (8) the scale of the anticipated effects of a fire or an explosion;
- 1260 (9) any places which are or can be connected via openings to places in which explosive atmospheres may occur; and
- 1261 (10) such additional safety information as the employer may need in order to complete the risk assessment<sup>12</sup>.

The risk assessment<sup>13</sup> must be reviewed by the employer regularly so as to keep it up to date and particularly if:

- 1262 (i) there is reason to suspect that the risk assessment is no longer valid; or
- 1263 (ii) there has been a significant change in the matters to which the risk assessment relates including when the workplace, work processes, or organisation of the work undergoes significant changes, extensions or conversions<sup>14</sup>.

Where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>15</sup>.

Where the employer employs five or more employees, the employer must record the significant findings of the risk assessment as soon as is practicable<sup>16</sup> after that assessment is made, including in particular:

- 1264 (A) the measures which have been or will be taken by him pursuant to the relevant regulations;
  - 1265 (B) sufficient information to show that the workplace and work processes are designed, operated and maintained with due regard for safety and that, in accordance with the Provision and Use of Work Equipment Regulations 1998<sup>17</sup>, adequate arrangements have been made for the safe use of work equipment; and
  - 1266 (C) where an explosive atmosphere may occur at the workplace, and subject to transitional provisions<sup>18</sup> sufficient information to show:
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- 252. (aa) those places which have been classified into zones<sup>19</sup>;
  - 253. (bb) equipment which is required for, or helps to ensure, the safe operation of equipment located in places classified as hazardous<sup>20</sup>;
  - 254. (cc) that any verification of overall explosion safety required<sup>21</sup> has been carried out; and
  - 255. (dd) the aim of any co-ordination required<sup>22</sup> and the measures and procedures for implementing it<sup>23</sup>.
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No new work activity involving a dangerous substance may commence unless an assessment has been made and the measures required by the relevant regulations have been implemented<sup>24</sup>.

Where two or more employers share the same workplace, whether on a temporary or a permanent basis, where an explosive atmosphere may occur, the employer responsible for the workplace must co-ordinate the implementation of all the measures required by the relevant regulations to be taken to protect employees from any risk from the explosive atmosphere<sup>25</sup>.

The Health and Safety Executive<sup>26</sup> may, by a certificate in writing, exempt any person or class of persons or any dangerous substance or class of dangerous substances from all or any of the requirements or prohibitions imposed by or under the Dangerous Substances and Explosive Atmospheres Regulations 2002<sup>27</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption and to any requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it and that the exemption will be compatible with the requirements of the relevant European Directives<sup>28</sup>.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing, exempt any of Her Majesty's Forces<sup>29</sup>, any visiting force<sup>30</sup>, any member of a visiting force working in or attached to a headquarters<sup>31</sup> or any person engaged in work involving dangerous substances, if that person is under the direct supervision of a representative of the Secretary of State for Defence, from all or any of the requirements or prohibitions imposed by the 2002 regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing, except that, where any such exemption is granted, suitable arrangements must be made for the assessment of the risk to safety created by the work involving dangerous substances and for adequately controlling the risk to persons to whom the exemption relates<sup>32</sup>.

The 2002 regulations are supported by an approved code of practice<sup>33</sup>.

1 For these purposes, 'dangerous substance' means (1) a substance or preparation which meets the criteria in the approved classification and labelling guide for classification as a substance or preparation which is explosive, oxidising, extremely flammable, highly flammable or flammable, whether or not that substance or preparation is classified under the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716 (see PARA 571); (2) a substance or preparation which because of its physico-chemical or chemical properties and the way it is used or is present at the workplace creates a risk, not being a substance or preparation falling within head (1) above; or (3) any dust, whether in the form of solid particles or fibrous materials or otherwise, which can form an explosive mixture with air or an explosive atmosphere, not being a substance or preparation falling within head (1) or head (2) above; 'substance' means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour; and 'preparation' means a mixture or solution of two or more substances: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2. As to the meanings of 'workplace' and 'explosive atmosphere' see notes 2, 11.

2 'Workplace' means any premises or part of premises used for or in connection with work, and includes (1) any place within the premises to which an employee has access while at work; and (2) any room, lobby, corridor, staircase, road or other place (a) used as a means of access to or egress from that place of work; or (b) where facilities are provided for use in connection with that place of work, other than a public road; and 'public road' means, in England and Wales, a highway maintainable at public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2. The provisions of the Petroleum (Consolidation) Act 1928 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1625-1626) do not apply to any such workplace, apart from a workplace used, or intended for use, for dispensing petroleum-spirit; and for these purposes, any part of a workplace where petroleum-spirit is kept other than for dispensing is not to be regarded as used, or intended for use, for dispensing petroleum-spirit: Petroleum (Consolidation) Act 1928 s 25A(1)(c), (2) (added by SI 2002/2776).

3 The 2002 regulations apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and employee: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 4(2). Apart from regs 15, 16 and 17(4)-(5) (amendments, repeals and transitional provisions), they do not apply to the master or crew of a ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master and, for these purposes, (1) 'ship' includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy or an offshore installation; and (2) the reference to the normal ship-board activities of a ship's crew includes (a) the construction, reconstruction or conversion of a ship outside, but not inside, Great Britain; and (b) the repair of a ship save repair when carried out in dry dock: reg 3(1). For other exclusions see reg 3(2), (3); note 23; and PARA 656 note 18. As to exemptions see the text and notes 26-32. 'Offshore installation' has the same meaning as it is given by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (see PARA 733 note 2) in so far as that regulation extends to mineral extracting industries within the scope of EC Council Directive 92/91 (OJ L348, 28.11.1992, p 9) concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, art 2(a): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2.

The 2002 regulations apply outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59 and 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 12.

4 'Risk' means the likelihood of a person's safety being affected by harmful physical effects being caused to him from fire, explosion or other events arising from the hazardous properties of a dangerous substance in connection with work and also the extent of that harm: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2. As to the meaning of 'hazardous' see note 7.

5 Where a duty is placed by the 2002 regulations on an employer in respect of his employees, he is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried on by the employer, except that (1) the duties of the employer under the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, regs 6(5)(f) and 7(5) (which relate, respectively, to the provision of suitable personal protective equipment and the provision of appropriate work clothing: see PARAS 656-657) do not extend to persons who are not his employees; and (2) the duties of the employer under regs 8 and 9 (which relate, respectively, to dealing with accidents and to provision of information, instruction and training: see PARAS 658-659) do not extend to persons who are not his employees, unless those persons are at the workplace where the work is being carried on and subject to the following, ie, that, in relation to the application of reg 9 to such persons, reg 9 applies to the extent that is required by the nature and the degree of the risk: reg 4(1).

6 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(1).

7 'Hazard' means the physico-chemical or chemical property of a dangerous substance which has the potential to give rise to fire, explosion, or other events which can result in harmful physical effects of a kind

similar to those which can be caused by fire or explosion, affecting the safety of a person, and references in the 2002 regulations to 'hazardous' are to be construed accordingly: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2.

8 'Safety data sheet' means a safety data sheet within the meaning of European Parliament and EC Council Regulation 1907/2006 (OJ L396, 30.12.2006, p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2 (amended by SI 2009/716).

9 'Work processes' means all technical aspects of work involving dangerous substances and includes (1) appropriate technical means of supervision; (2) connecting devices; (3) control and protection systems; (4) engineering controls and solutions; (5) equipment; (6) materials; (7) machinery; (8) plant; (9) protective systems; and (10) warning and other communication systems: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2.

10 le pursuant to the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776: see the text and notes 1-9, 11-33; and PARA 656 et seq.

11 'Explosive atmosphere' means a mixture, under atmospheric conditions, of air and one or more dangerous substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 2.

12 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(2). Regulation 5(2)(f), (g), (h) and (i) (see heads (6)-(9) in the text), reg 6(4)(d), 6(5)(b) and (e) (see PARA 656) and reg 8(1)(d) and (e) (see PARA 658) and the requirements of Sch 1 paras 5, 6 (see PARA 656 note 18) do not apply to any activity at an offshore installation carried out for the purposes of the offshore installation: reg 3(3).

13 'Risk assessment' means the assessment of risks required by the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(1): reg 2.

14 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(3)(a), (b).

15 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(3).

16 As to when is as soon as practicable see PARA 417.

17 le in accordance with the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306: see PARA 482 et seq.

18 le the transitional provisions in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 17(1)-(3).

19 le pursuant to the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(1): see PARA 657.

20 See note 19.

21 le by the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(4): see PARA 657.

22 le by the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 11: see the text and note 25.

23 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(4). Regulation 5(4)(c) (see head (c) in the text), reg 7 (see PARA 657) and reg 11 (see the text to note 25) do not apply to (1) areas used directly for and during the medical treatment of patients; (2) the use of gas appliances burning gaseous fuel (ie, any fuel which is in a gaseous state at a temperature of 15 degrees C under a pressure of 1 bar) which (a) are used for cooking, heating, hot water production, refrigeration, lighting or washing; and (b) have, where applicable, a normal water temperature not exceeding 105 degrees C, including forced draught burners and heating bodies to be equipped with such burners but not including an appliance specifically designed for use in an industrial process carried out on industrial premises; (3) gas fittings within the meaning of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (see PARA 609 note 1; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 911) located in domestic premises, not being gas appliances falling within head (2) above; (4) the manufacture, handling, use, storage and transport of explosives or chemically unstable substances; (5) any activity at a mine within the meaning of the Mines and Quarries Act 1954 s 180 (see PARA 343 note 1) carried out for the purposes of the mine; (6) any activity at a quarry within the meaning of the Quarries Regulations 1999, SI 1999/2024, reg 3 (see PARA 838) carried out for the purposes of the quarry; (7)



any activity at a borehole site within the meaning of the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1) (see PARA 744) carried out for the purposes of the borehole site; (8) any activity at an offshore installation carried out for the purposes of the offshore installation; and (9) the use of means of transport by land, water or air which is regulated by international agreements and the European Community Directives giving effect to them in so far as they fall within the disapplication in European Parliament and EC Council Directive 99/92 (OJ L23, 28.01.2000, p 57) on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres, art 1.2.(e), except for any means of transport intended for use in a potentially explosive atmosphere: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 3(2).

24 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 5(5).

25 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 11.

26 As to the Health and Safety Executive see PARA 361 et seq.

27 Is imposed by the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776: reg 13(1). Any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 13(1).

28 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 13(2). For these purposes, 'the Directives' means EC Council Directive 98/24 (OJ L31, 05.05.1998, p 11) on the protection of the health and safety of workers from the risks related to chemical agents at work and European Parliament and EC Council Directive 99/92 (OJ L23, 28.01.2000, p 57) on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 13(3).

29 For these purposes, 'Her Majesty's Forces' means any of the naval, military or air forces of the Crown, whether raised inside or outside the United Kingdom and whether any such force is a regular, auxiliary or reserve force, and includes any civilian employed by those forces: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 14(1)(a).

30 For these purposes, 'visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 14(1)(b).

31 For these purposes, 'headquarters' means a headquarters for the time being specified in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 14(1)(c).

32 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 14(2).

33 As to codes of practice approved by the Health and Safety Executive see PARA 426.

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#### **656. Elimination or reduction of risks from dangerous substances.**

Every employer<sup>1</sup> must ensure that risk<sup>2</sup> is either eliminated or reduced so far as is reasonably practicable<sup>3</sup>. In complying with this duty, substitution must by preference be undertaken, whereby the employer must avoid, so far as is reasonably practicable, the presence or use of a dangerous substance<sup>4</sup> at the workplace<sup>5</sup> by replacing it with a substance or process which either eliminates or reduces the risk<sup>6</sup>.

Where it is not reasonably practicable to eliminate risk pursuant to the above provisions, the employer must, so far as is reasonably practicable, apply measures, consistent with the risk assessment<sup>7</sup> and appropriate to the nature of the activity or operation:

- 1267 (1) to control risks, including the specified measures<sup>8</sup>; and
- 1268 (2) to mitigate the detrimental effects of a fire or explosion or the other harmful physical effects arising from dangerous substances, including the specified<sup>9</sup> measures<sup>10</sup>.

The following measures are, in order of priority, those specified for the purposes of head (1) above:

- 1269 (a) the reduction of the quantity of dangerous substances to a minimum;
- 1270 (b) the avoidance or minimising of the release of a dangerous substance;
- 1271 (c) the control of the release of a dangerous substance at source;
- 1272 (d) the prevention of the formation of an explosive atmosphere<sup>11</sup>, including the application of appropriate ventilation;
- 1273 (e) ensuring that any release of a dangerous substance which may give rise to risk is suitably collected, safely contained, removed to a safe place, or otherwise rendered safe, as appropriate;
- 1274 (f) the avoidance of ignition sources including electrostatic discharges, and adverse conditions which could cause dangerous substances to give rise to harmful physical effects; and
- 1275 (g) the segregation of incompatible dangerous substances<sup>12</sup>.

The following measures are those specified for the purposes of head (2) above:

- 1276 (i) the reduction to a minimum of the number of employees<sup>13</sup> exposed;
- 1277 (ii) the avoidance of the propagation of fires or explosions;
- 1278 (iii) the provision of explosion pressure relief arrangements;
- 1279 (iv) the provision of explosion suppression equipment;
- 1280 (v) the provision of plant which is constructed so as to withstand the pressure likely to be produced by an explosion; and
- 1281 (vi) the provision of suitable personal protective equipment<sup>14</sup>.

The employer must arrange for the safe handling, storage and transport of dangerous substances and waste containing dangerous substances<sup>15</sup>. He must ensure that any conditions

necessary pursuant to the relevant regulations<sup>16</sup> for ensuring the elimination or reduction of risk are maintained<sup>17</sup>.

The employer must, so far as is reasonably practicable, take the specified general safety measures<sup>18</sup> subject to those measures being consistent with the risk assessment and appropriate to the nature of the activity or operation<sup>19</sup>.

1 The duties set out in the text apply to self-employed persons: see PARA 655 note 3.

2 As to the meaning of 'risk' see PARA 655 note 4.

3 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(1). As to what is reasonably practicable see PARA 417. As to the application of the 2002 regulations, and exemptions from them, see PARA 655.

4 As to the meaning of 'dangerous substance' see PARA 655 note 1.

5 As to the meaning of 'workplace' see PARA 655 note 2.

6 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(2).

7 As to the meaning of 'risk assessment' see PARA 655 note 13.

8 Ie the measures specified in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(4): see heads (a)-(g) in the text.

9 Ie the measures specified in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(5): see heads (i)-(vi) in the text.

10 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(3).

11 As to the meaning of 'explosive atmosphere' see PARA 655 note 11.

12 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(4).

13 As to persons who are not employees see PARA 655 note 5.

14 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(5). 'Personal protective equipment' means all equipment which is intended to be worn or held by a person at work and which protects that person against one or more risks to his safety, and any addition or accessory designed to meet that objective: reg 2.

15 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(6).

16 Ie pursuant to the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776: see PARA 655; the text and notes 1-15, 17-19; and PARA 657 et seq.

17 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(7).

18 Ie the general safety measures specified in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 1. The following measures are those specified for these purposes (Sch 1 para 1): ie (1) in relation to the workplace and work processes (a) ensuring that the workplace is designed, constructed and maintained so as to reduce risk; (b) designing, constructing, assembling, installing, providing and using suitable work processes so as to reduce risk; (c) maintaining work processes in an efficient state, in efficient working order and in good repair; (d) ensuring that equipment and protective systems meet the following requirements: (i) where power failure can give rise to the spread of additional risk, equipment and protective systems must be able to be maintained in a safe state of operation independently of the rest of the plant in the event of power failure; (ii) means for manual override must be possible, operated by employees competent to do so, for shutting down equipment and protective systems incorporated within automatic processes which deviate from the intended operating conditions, provided that the provision or use of such means does not compromise safety; (iii) on operation of emergency shutdown, accumulated energy must be dissipated as quickly and as safely as possible or isolated so that it no longer constitutes a hazard; and (iv) necessary measures must be taken to prevent confusion between connecting devices; and (2) in relation to organisational measures, the application of appropriate systems of work including (a) the issuing of written instructions for the carrying out of the work; and (b) a system of permits to work with such permits being issued by a person with responsibility for this function prior to the commencement of the work concerned, where the

work is carried out in hazardous places or involves hazardous activities: Sch 1 paras 2-6. As to the meaning of 'work processes' see PARA 655 note 9. The requirements of Sch 1 paras 5, 6 (see heads (1)(d), (2)(a), (b) above) do not apply to any activity at an offshore installation carried out for the purposes of the offshore installation: reg 3(3). As to the meaning of 'offshore installation' see PARA 655 note 3.

19 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(8).

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## **657. Places where explosive atmospheres may occur.**

Subject to transitional provisions<sup>1</sup>, every employer<sup>2</sup> must classify places at the workplace<sup>3</sup> where an explosive atmosphere<sup>4</sup> may occur into hazardous<sup>5</sup> or non-hazardous places in accordance with the statutory requirements<sup>6</sup> and must classify those places so classified as hazardous into zones<sup>7</sup>.

The employer must ensure that the specified requirements<sup>8</sup> are applied to equipment and protective systems in the places so classified as hazardous<sup>9</sup>.

Where necessary, places so classified as hazardous must be marked by the employer with signs<sup>10</sup> at their points of entry<sup>11</sup>.

Before a workplace containing places so classified as hazardous is used for the first time, the employer must ensure that its overall explosion safety is verified by a person who is competent in the field of explosion protection as a result of his experience or any professional training or both<sup>12</sup>.

The employer must ensure that appropriate work clothing which does not give rise to electrostatic discharges is provided for use in places so classified as hazardous<sup>13</sup>.

<sup>1</sup> I.e. subject to the transitional provisions in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 17(1)-(3); reg 7(6).

<sup>2</sup> The duties set out in the text apply to self-employed persons: see PARA 655 note 3.

<sup>3</sup> As to the meaning of 'workplace' see PARA 655 note 2.

<sup>4</sup> As to the meaning of 'explosive atmosphere' see PARA 655 note 11.

<sup>5</sup> As to the meaning of 'hazardous' see PARA 655 note 7.

<sup>6</sup> I.e. in accordance with the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 2 para 1. A place in which an explosive atmosphere may occur in such quantities as to require special precautions to protect the health and safety of the workers concerned is deemed to be hazardous within the meaning of the 2002 regulations; and a place in which an explosive atmosphere is not expected to occur in such quantities as to require special precautions is deemed to be non-hazardous within the meaning of those regulations: Sch 2 para 1. As to the application of the 2002 regulations, and exemptions from them, see PARA 655.

<sup>7</sup> Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(1). Hazardous places must be classified into zones in accordance with Sch 2 para 2: reg 7(1). Hazardous places are classified in terms of zones on the basis of the frequency and duration of the occurrence of an explosive atmosphere: Sch 2 para 2. The detailed classification of the various zones is not set out in this work.

<sup>8</sup> I.e. the requirements specified in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 3. Equipment and protective systems for all places in which explosive atmospheres may occur must be selected on the basis of the requirements set out in the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192 (see PARA 569 et seq), unless the risk assessment finds otherwise: Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 3 para 1. As to the categories of equipment to be used in the various zones see Sch 3 para 2. For these purposes (1) 'equipment' means machines, apparatus, fixed or mobile devices, control components and instrumentation thereof and detection or prevention systems which, separately or jointly, are intended for the generation, transfer, storage, measurement, control and conversion of energy and the

processing of material, as the case may be, and which are capable of causing an explosion through their own potential sources of ignition; (2) 'protective systems' means devices other than components of equipment which are intended to halt incipient explosions immediately or limit the effective range of an explosion or both, as the case may be, and which systems are separately placed on the market for use as autonomous systems; (3) 'devices' means safety devices, controlling devices and regulating devices intended for use outside potentially explosive atmospheres but required for or contributing to the safe functioning of equipment and protective systems with respect to the risks of explosion; (4) 'component' means any item essential to the safe functioning of equipment and protective systems but with no autonomous function; and (5) 'potentially explosive atmosphere' means an atmosphere which could become explosive due to local and operational conditions: Sch 3 para 3.

9 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(2).

10 In accordance with the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 4. The distinctive features of the sign illustrated in Sch 4 are its triangular shape and that it contains black letters on a yellow background with black edging (the yellow part to take up at least 50% of the area of the sign): Sch 4.

11 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(3).

12 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(4).

13 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 7(5).

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**658. Arrangements to deal with accidents, incidents and emergencies.**

Subject to certain exceptions<sup>1</sup>, in order to protect the safety of his employees<sup>2</sup> from an accident, incident or emergency related to the presence of a dangerous substance<sup>3</sup> at the workplace<sup>4</sup>, the employer<sup>5</sup> must ensure that:

- 1282 (1) procedures, including the provision of appropriate first-aid facilities and relevant safety drills, which must be tested at regular intervals, have been prepared which can be put into effect when such an event occurs;
- 1283 (2) information on emergency arrangements, including details of relevant work hazards<sup>6</sup> and hazard identification arrangements, and specific hazards likely to arise at the time of an accident, incident or emergency, is available;
- 1284 (3) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs;
- 1285 (4) where necessary, before any explosion conditions are reached, visual, or audible, warnings are given and employees withdrawn; and
- 1286 (5) where the risk assessment<sup>7</sup> indicates it is necessary, escape facilities are provided and maintained to ensure that, in the event of danger, employees can leave endangered places promptly and safely<sup>8</sup>.

Subject to the same exceptions<sup>9</sup>, the employer must ensure that information on the matters referred to in heads (1) and (3) to (5) above and the information required by head (2) above is:

- 1287 (a) made available to relevant accident and emergency services to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures; and
- 1288 (b) displayed at the workplace, unless the results of the risk assessment make this unnecessary<sup>10</sup>.

Subject as before<sup>11</sup>, in the event of an accident, incident or emergency related to the presence of a dangerous substance at the workplace, the employer must ensure that:

- 1289 (i) immediate steps are taken to mitigate the effects of the event, restore the situation to normal and inform those of his employees who may be affected; and
- 1290 (ii) only those persons who are essential for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with appropriate personal protective equipment<sup>12</sup> and protective clothing and any necessary specialised safety equipment and plant, which must be used until the situation is restored to normal<sup>13</sup>.

The above provisions do not apply where the results of the risk assessment show that, because of the quantity of each dangerous substance at the workplace, there is only a slight risk to

employees and the measures taken by the employer to comply with his duty to eliminate or reduce the risks from dangerous substances<sup>14</sup> are sufficient to control that risk<sup>15</sup>.

1   le subject to the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 8(4): see the text and notes 14-15.

2   As to persons who are not employees see PARA 655 note 5.

3   As to the meaning of 'dangerous substance' see PARA 655 note 1.

4   As to the meaning of 'workplace' see PARA 655 note 2.

5   As to the application of the duties set out in the text to self-employed persons see PARA 655 note 3.

6   As to the meaning of 'hazard' see PARA 655 note 7.

7   As to the meaning of 'risk assessment' see PARA 655 note 13.

8   Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 8(1). As to the application of the 2002 regulations, and exemptions from them, see PARA 655.

9   See note 1.

10   Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 8(2).

11   See note 1.

12   As to the meaning of 'personal protective equipment' see PARA 656 note 14.

13   Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 8(3).

14   le under the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 6(1): see PARA 656.

15   Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 8(4).



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### **659. Information etc; instruction and training.**

Where a dangerous substance<sup>1</sup> is present at the workplace<sup>2</sup>, the employer<sup>3</sup> must provide his employees<sup>4</sup> with:

- 1291 (1) suitable and sufficient information, instruction and training on the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other employees at the workplace;
- 1292 (2) the details of any such substance including:
  - 155 256. (a) the name of the substance and the risk<sup>5</sup> which it presents;
  - 257. (b) access to any relevant safety data sheet<sup>6</sup>; and
  - 258. (c) legislative provisions which concern the hazardous<sup>7</sup> properties of the substance; and
- 156 1293 (3) the significant findings of the risk assessment<sup>8</sup>.

The information, instruction and training so required must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer and provided in a manner appropriate to the risk assessment<sup>9</sup>.

Where containers and pipes used at work for dangerous substances are not marked in accordance with relevant requirements of the specified legislation<sup>10</sup>, the employer must, subject to any derogations provided for in that legislation, ensure that the contents of those containers and pipes, together with the nature of those contents and any associated hazards, are clearly identifiable<sup>11</sup>.

1 As to the meaning of 'dangerous substance' see PARA 655 note 1.

2 As to the meaning of 'workplace' see PARA 655 note 2.

3 As to the application of the duties set out in the text to self-employed persons see PARA 655 note 3.

4 As to persons who are not employees see PARA 655 note 5.

5 As to the meaning of 'risk' see PARA 655 note 4.

6 As to the meaning of 'safety data sheet' see PARA 655 note 8.

7 As to the meaning of 'hazardous' see PARA 655 note 7.

8 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 9(1). As to the meaning of 'risk assessment' see PARA 655 note 13. As to the application of the 2002 regulations, and exemptions from them, see PARA 655.

9 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 9(2).

10 I.e the legislation listed in the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 5. The legislation so listed is (1) the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (see **EXPLOSIVES**); (2) the Health and Safety (Safety Signs and Signals) Regulations 1996, SI

1996/341 (see PARA 445); (3) the Good Laboratory Practice Regulations 1999, SI 1999/3106 (see PARAS 580-581); (4) the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689 (revoked: see now the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716) (see PARAS 571-572); and (5) the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348): Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, Sch 5 (substituted by SI 2004/568; and amended by SI 2007/1573).

11 Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 10.

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## **(vi) Fire and Fire Precautions**

### **660. General precautions.**

The fire precautions to be taken generally by employers and other persons in control of workplaces and other premises are governed by the Regulatory Reform (Fire Safety) Order 2005<sup>1</sup>. Where the premises are a workplace<sup>2</sup>, the responsible person<sup>3</sup> must ensure that any duty imposed by the relevant provisions as to fire safety<sup>4</sup> is complied with in respect of those premises<sup>5</sup>. Where the premises are not a workplace, the responsible person must ensure that any such duty is complied with in respect of those premises, so far as the requirements relate to matters within his control<sup>6</sup>. Any such duty imposed on the responsible person in respect of premises must also be imposed on every person, other than the responsible person, who has, to any extent, control of those premises so far as the requirements relate to matters within his control<sup>7</sup>. The relevant provisions<sup>8</sup> only require the taking or observance of general fire precautions<sup>9</sup> in respect of relevant persons<sup>10</sup>.

The responsible person must (1) take such general fire precautions as will ensure, so far as is reasonably practicable, the safety<sup>11</sup> of any of his employees<sup>12</sup>; and (2) in relation to relevant persons<sup>13</sup> who are not his employees, take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe<sup>14</sup>.

Where necessary (whether due to the features of the premises, the activity carried on there, any hazard present or any other relevant circumstances) in order to safeguard the safety of relevant persons, the responsible person must ensure that the premises are, to the extent that it is appropriate<sup>15</sup>, equipped with appropriate fire-fighting equipment and with fire detectors and alarms and that any non-automatic fire-fighting equipment so provided is easily accessible, simple to use and indicated by signs<sup>16</sup>. The responsible person must, where necessary:

- 1294 (a) take measures for fire-fighting in the premises, adapted to the nature of the activities carried on there and the size of the undertaking and of the premises concerned;
- 1295 (b) nominate competent<sup>17</sup> persons to implement those measures and ensure that the number of such persons, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the premises concerned; and
- 1296 (c) arrange any necessary contacts with external emergency services, particularly as regards fire-fighting, rescue work, first-aid and emergency medical care<sup>18</sup>.

Other duties of the responsible person include carrying out a risk assessment<sup>19</sup>; implementing any preventive and protective measures on the basis of specified principles<sup>20</sup>; making and giving effect to fire safety arrangements<sup>21</sup>; eliminating or reducing risks from dangerous substances<sup>22</sup>; ensuring that routes to emergency exits from premises and the exits themselves are kept clear at all times<sup>23</sup>; establishing and where necessary giving effect to procedures for serious and imminent danger and for danger areas<sup>24</sup>; ensuring that premises and any facilities, equipment and devices provided in respect of the premises are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good

repair<sup>25</sup>; appointing competent persons to assist the responsible person in undertaking the preventive and protective measures<sup>26</sup>; providing information to employees and others<sup>27</sup>; ensuring that employees are provided with adequate safety training<sup>28</sup>; and co-operating and co-ordinating where two or more responsible persons share, or have duties in respect of, premises<sup>29</sup>.

Every employee must, while at work:

- 1297 (i) take reasonable care for the safety of himself and of other relevant persons who may be affected by his acts or omissions at work;
  - 1298 (ii) as regards any duty or requirement imposed on his employer by or under any provision of the relevant legislation<sup>30</sup>, co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with; and
  - 1299 (iii) inform his employer or any other employee with specific responsibility for the safety of his fellow employees:
- 157
- 259. (A) of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to safety; and
  - 260. (B) of any matter which a person with the first-mentioned employee's training and instruction would reasonably consider represented a shortcoming in the employer's protection arrangements for safety,
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- 1300 in so far as that situation or matter either affects the safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with these provisions<sup>31</sup>.

The Health and Safety Executive<sup>32</sup> is the enforcing authority in respect of the 2005 Order in relation to certain<sup>33</sup> premises<sup>34</sup>. The detailed requirements of the relevant legislation are set out elsewhere in this work<sup>35</sup>.

In addition to the general requirements referred to above, a number of specific regulations make provision with regard to fire precautions<sup>36</sup>.

1 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and **FIRE SERVICES**.

2 'Workplace' means any premises or parts of premises, not being domestic premises, used for the purposes of an employer's undertaking and which are made available to an employee of the employer as a place of work and includes (1) any place within the premises to which such employee has access while at work; and (2) any room, lobby, corridor, staircase, road, or other place (a) used as a means of access to or egress from that place of work; or (b) where facilities are provided for use in connection with that place of work, other than a public road: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2. 'Premises' includes any place and, in particular, includes (i) any workplace; (ii) any vehicle, vessel, aircraft or hovercraft; (iii) any installation on land (including the foreshore and other land intermittently covered by water), and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and (iv) any tent or movable structure; and 'domestic premises' means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling): art 2. 'Public road' means a highway maintainable at public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248): Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2. As to excepted workplaces see note 5.

3 le (1) in relation to a workplace, the employer, if the workplace is to any extent under his control; (2) in relation to any premises not falling within head (1) above, (a) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or (b) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking: Regulatory Reform (Fire Safety)

Order 2005, SI 2005/1541, arts 2, 3. 'Owner' means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent: art 2. 'Rackrent' in relation to premises, means a rent that is not less than two-thirds of the rent at which the property might reasonably be expected to be let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average cost of the repairs, insurance and other expenses (if any) necessary to maintain the property in a state to command such rent: art 2.

4 le by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 8-22 or by regulations made under art 24. As to the disapplication of certain provisions see art 7.

5 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 5(1). The 2005 order does not apply in relation to (1) domestic premises, except to the extent mentioned in art 31(10); (2) an offshore installation within the meaning of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (see PARA 733 note 2); (3) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master; (4) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings; (5) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act; (6) a mine within the meaning of the Mines and Quarries Act 1954 s 180, other than any building on the surface at a mine; (7) a borehole site to which the Borehole Sites and Operations Regulations 1995, SI 1995/2038, apply: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 6(1). Subject to this, the order applies in relation to any premises: art 6(2). 'Ship' includes every description of vessel used in navigation; and 'normal ship-board activities' include the repair of a ship, save repair when carried out in dry dock: art 2.

6 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 5(2).

7 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 5(3). Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to (1) the maintenance or repair of any premises, including anything in or on premises; or (2) the safety of any premises, that person is to be treated, for the purposes of art 5(3), as being a person who has control of the premises to the extent that his obligation so extends: art 5(4).

8 le the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 8-22 and any regulations made under art 24.

9 'General fire precautions' in relation to premises means, subject to the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 4(2), (1) measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises; (2) measures in relation to the means of escape from the premises; (3) measures for securing that, at all material times, the means of escape can be safely and effectively used; (4) measures in relation to the means for fighting fires on the premises; (5) measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and (6) measures in relation to the arrangements for action to be taken in the event of fire on the premises, including measures relating to the instruction and training of employees and measures to mitigate the effects of the fire: art 4(1). Such precautions, however, do not include special, technical or organisational measures required to be taken or observed in any workplace in connection with the carrying on of any work process, where those measures (a) are designed to prevent or reduce the likelihood of fire arising from such a work process or reduce its intensity; and (b) are required to be taken or observed to ensure compliance with any requirement of the relevant statutory provisions within the meaning given by the Health and Safety at Work etc 1974 s 53(1) (see PARA 302 note 24): Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 4(2). For these purposes, 'work process' means all aspects of work involving, or in connection with the use of plant or machinery or the use or storage of any dangerous substance: art 4(3). 'Dangerous substance' means (i) a substance or preparation which meets the criteria in the approved classification and labelling guide for classification as a substance or preparation which is explosive, oxidising, extremely flammable, highly flammable or flammable, whether or not that substance or preparation is classified under the CHIP Regulations (ie the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716 (see PARA 571)); (ii) a substance or preparation which because of its physico-chemical or chemical properties and the way it is used or is present in or on premises creates a risk; and (iii) any dust, whether in the form of solid particles or fibrous materials or otherwise, which can form an explosive mixture with air or an explosive atmosphere: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2; Interpretation Act 1978 s 17(2).

10 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 5(5).

11 'Safety' means the safety of persons in respect of harm caused by fire; and 'safe' is to be interpreted accordingly: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2.

12 'Employee' means a person who is or is treated as an employee for the purposes of the Health and Safety at Work etc Act 1974 (see PARA 302 note 4) and related expressions are to be construed accordingly: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2.

13 'Relevant persons' means (1) any person (including the responsible person) who is or may be lawfully on the premises; and (2) any person in the immediate vicinity of the premises who is at risk from a fire on the premises, but does not include a fire-fighter who is carrying out his duties in relation to a function of a fire and rescue authority under the Fire and Rescue Services Act 2004 s 7, 8 or 9 (fire-fighting, road traffic accidents and other emergencies), other than in relation to a function under s 7(2)(d), 8(2)(d) or 9(3)(d) (see **FIRE SERVICES**): Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2.

14 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 8.

15 For these purposes what is appropriate is to be determined having regard to the dimensions and use of the premises, the equipment contained on the premises, the physical and chemical properties of the substances likely to be present and the maximum number of persons who may be present at any one time: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(2).

16 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(1).

17 A person is to be regarded as competent for these purposes where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the measures referred to in head (b) in the text: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(4).

18 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 13(3).

19 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 9.

20 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 10, Sch 1 Pt 3.

21 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 11.

22 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 12.

23 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 14.

24 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 15, 16.

25 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 17.

26 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 18.

27 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 19, 20.

28 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 21.

29 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 22.

30 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

31 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 23.

32 As to the Health and Safety Executive see PARA 361 et seq.

33 See (1) any premises for which a licence is required in accordance with the Nuclear Installations Act 1965 s 1 or for which a permit is required in accordance with s 2 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1489); (2) any premises which would, except for the fact that it is used by, or on behalf of, the Crown, be required to have a licence or permit in accordance with the provisions referred to in head (1) above; (3) a ship, including a ship belonging to Her Majesty which forms part of Her Majesty's Navy, which is in the course of construction, reconstruction or conversion or repair by persons who include persons other than the master and crew of the ship; (4) any workplace which is or is on a construction site within the meaning of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674 note 11) and to which those regulations apply, other than construction sites referred to in reg 46.

34 Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 25(b). The fire and rescue authority for the area in which premises are, or are to be, situated, is the enforcing authority in any case not falling within any art 25(b)-(e): art 25(a). The fire service maintained by the Secretary of State for Defence is the enforcing authority in relation to (1) premises, other than premises falling within note 33 head (3), occupied solely for the

purposes of the armed forces of the Crown; (2) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964; (3) premises, other than premises falling within note 33 head (3), which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 25(c). The relevant local authority is the enforcing authority in relation to premises which consist of (a) a sports ground designated as requiring a safety certificate under the Safety of Sports Grounds Act 1975 s 1 (safety certificates for large sports stadia); (b) a regulated stand within the meaning of the Fire Safety and Safety of Places of Sport Act 1987 s 26(5) (safety certificates for stands at sports grounds): Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 25(d). A fire inspector, or any person authorised by the Secretary of State to act for the purposes of the 2005 Order, is the enforcing authority in relation to (i) premises owned or occupied by the Crown, other than premises falling within note 33 head (2) and art 25(c); (ii) premises in relation to which the United Kingdom Atomic Energy Authority is the responsible person, other than premises falling within note 33 head (2): art 25(e). 'Fire inspector' means an inspector or assistant inspector appointed under the Fire and Rescue Services Act 2004 s 28: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 2. As to the Secretary of State see PARA 349 et seq.

35 See **FIRE SERVICES**.

36 See eg the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 38-41, 46; and PARAS 694-695; the Work in Compressed Air Regulations 1996, 1996/1656, reg 14; and PARA 704; the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743; and PARA 743; the Quarries Regulations 1999, SI 1999/2024, reg 20; and PARA 841.

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## **(vii) Other Risks**

### **661. In general.**

Where no specific provision is made by regulations in respect of the general risks already discussed<sup>1</sup>, or in respect of the major hazards and risks discussed below<sup>2</sup>, an employer is still under a duty to protect an employee from known risks in so far as it is reasonably practicable to do so<sup>3</sup>. This is particularly the case where guidance has been issued<sup>4</sup>, or a code of practice has been approved, by the Health and Safety Executive<sup>5</sup>. Occupational health and safety is a constantly developing area and both domestic and European legislation are frequently updated to take account of new technical developments and knowledge<sup>6</sup>.

1 See PARAS 583 et seq (risks relating to general processes and activities), 605 et seq (general risks).

2 See PARA 662 et seq.

3 See PARAS 412, 414 (common law duty of care), 421 (statutory duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees). As to the date of knowledge see PARA 415 note 6.

4 Such guidance does not, however, have any legal status: see PARA 371.

5 As to the Health and Safety Executive see PARA 361 et seq; and as to the status of codes of practice approved by the Executive see PARAS 426-427.

6 Eg at the date at which this title states the law, the EC Council had adopted a common position with a view to adopting a directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from electromagnetic fields: see EC Common Position 10/2004 of 18 December 2003 (OJ C66E, 16.03.2004, p 1); and European Parliament and EC Council Directive 2004/40 (OJ L159, 30.4.2004, p 1; corrected in OJ L184, 24.5.2004, p 1) on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).



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### **(3) MAJOR ACCIDENT HAZARDS AND RADIATION EMERGENCIES**

#### **(i) Major Accident Hazards**

##### **662. Application of the relevant regulations.**

The Control of Major Accident Hazards Regulations 1999<sup>1</sup>, which implement the EC Council Directive on the control of major accident hazards involving dangerous substances (the 'SEVESO II directive')<sup>2</sup>, apply to an establishment<sup>3</sup> where a dangerous substance<sup>4</sup> is present<sup>5</sup> in a quantity equal to or exceeding the specified quantity<sup>6</sup>. The above reference to the presence of dangerous substances does not, however, include the presence of dangerous substances in the following activities:

- 1301 (1) the transport of those substances and their intermediate temporary storage by road, rail, inland waterways, sea or air, including their loading and unloading and transport to and from another means of transport at docks, wharves and marshalling yards<sup>7</sup>; or
- 1302 (2) the transport of those substances in a pipeline<sup>8</sup> or pumping station<sup>9</sup>.

Nor do the 1999 regulations apply to:

- 1303 (a) an establishment which is under the control of:  
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  - 261. (i) the Secretary of State for the purposes of the Ministry of Defence;
  - 262. (ii) a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964<sup>10</sup> or the service authorities of a visiting force<sup>11</sup>;
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  - 1304 (b) substances which create a hazard from ionising radiation if present on a site for which a nuclear site licence has been granted or is required<sup>12</sup>;
  - 1305 (c) the exploration, extraction and processing of minerals in mines, quarries or by means of boreholes, except:
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  - 263. (i) chemical and thermal processing operations; and
  - 264. (ii) storage relating to those operations,
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  - 1306 which involve dangerous substances; and
  - 1307 (d) waste land-fill sites, except tailing ponds or dams and other operational tailings disposal facilities containing dangerous substances, in particular when any such facilities are used in connection with the chemical and thermal processing of minerals<sup>13</sup>.

The 1999 regulations do not apply in Northern Ireland<sup>14</sup>.

1 ie the Control of Major Accident Hazards Regulations 1999, SI 1999/743, which came into force on 1 April 1999 (reg 1): see the text and notes 2-14; and PARA 663 et seq.

2 ie EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended by European Parliament and EC Council Directive 2003/105 (OJ L345, 31.12.2003, p 97)) except EC Council Directive 96/82 art 12 which relates to land use planning and which is implemented in England and Wales by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, which came into force on 20 April 1999 (reg 1(1)). See further **TOWN AND COUNTRY PLANNING**.

3 For these purposes, 'establishment' means the whole area under the control of the same person where dangerous substances are present in one or more installations, and for this purpose two or more areas under the control of the same person and separated only by a road, railway or inland waterway are to be treated as one whole area: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1). 'Control' in relation to a person means control in the course of a trade, business or other undertaking carried on by him: reg 2(1). As to the meaning of 'dangerous substance' see note 4.

4 ie a dangerous substance listed in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 1 Pt 2 col 1 or Sch 1 Pt 3 col 1 (see note 6): reg 3(1). 'Dangerous substance' means (subject to reg 3(3)(b)) a substance, mixture or preparation (1) listed in Sch 1 Pt 2 col 1; or (2) within a category specified in Sch 1 Pt 3 col 1, and present as a raw material, product, by-product, residue or intermediate: reg 2(1).

5 Any reference for these purposes to the presence of dangerous substances includes a reference to the anticipated presence of such substances and the presence of those which it is reasonable to believe may be generated during the loss of control of an industrial chemical process: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(3).

6 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 3(1). The specified quantity is that listed in the entry for that substance in Sch 1 Pt 2 col 2 or Sch 1 Pt 3 col 2. Regulations 7-14 (see PARAS 664-666) apply, however, only to an establishment where such a dangerous substance is present in a quantity equal to or exceeding the quantity listed in the entry for that substance in Sch 1 Pt 2 col 3 or Sch 1 Pt 3 col 3: reg 3(1). The provisions of the Petroleum (Consolidation) Act 1928 do not apply in respect of any establishment to which the Control of Major Accident Hazards Regulations 1999, SI 1999/743, apply by virtue of reg 3: Petroleum (Consolidation) Act 1928 s 25A(1)(a) (added by SI 1999/743; renumbered and amended by SI 2002/2776).

The Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 1 applies to the presence of dangerous substances at any establishment and determines the application of the relevant regulations in accordance with reg 3(1): Sch 1 Pt 1 para 1 (Sch 1 substituted by SI 2005/1088). Mixtures and preparations are to be treated in the same way as pure substances provided they remain within the concentration limits set according to their properties under the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716 (see PARA 571), unless a percentage composition or other description is specifically given: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 1 Pt 1 para 2 (as so substituted). The qualifying quantities set out in Sch 1 Pts 2 and 3 relate to each establishment: Sch 1 Pt 1 para 3 (as so substituted). The quantities to be considered for the application of the relevant regulations are the maximum quantities which are present at any one time. Dangerous substances present at an establishment only in quantities equal to or less than 2% of the relevant qualifying quantity must be ignored for the purposes of calculating the total quantity present if their location within an establishment is such that it cannot act as an initiator of a major accident elsewhere on site: Sch 1 Pt 1 para 4 (as so substituted). The rules given in Sch 3 Pt 3, note 4 governing the addition of dangerous substances, or categories of dangerous substances, apply where appropriate: Sch 1 Pt 1 para 5 (as so substituted). For the purposes of Sch 1, a gas is any substance that has an absolute vapour pressure equal to or greater than 101.3 kPa at a temperature of 20 degrees C (Sch 1 Pt 1 para 6 (as so substituted)) and a liquid is any substance that is not a gas and is not in the solid state at a temperature of 20 degrees C and at a standard pressure of 101.3 kPa (Sch 1 Pt 1 para 7 (as so substituted)).

The columns in Sch 1 Pts 2 and 3 are to be applied in accordance with the provisions of Sch 1 Pt I and notes set out in each of those Parts: reg 2(8).

Schedule 1 Pt 2 lists named substances. Where a substance or group of substances listed in Sch 1 Pt 2 also falls within a category of Sch 1 Pt 3, the qualifying quantities set out in Sch 1 Pt 2 must be used: Sch 1 Pt 2 (as so substituted). The named substances, and the specified quantities in tonnes, are as follows:

- 237 (1) Ammonium nitrate (as described in Sch 1 Pt 2 note 1 (as so substituted), ie ammonium nitrate-based compound or composite fertilisers (compound or composite fertilisers containing ammonium nitrate with phosphate and/or potash) in which the nitrogen content as a result of ammonium nitrate is (a) between 15.75% and 24.5% by weight and either with not more than 0.4% total combustible or organic materials or which satisfy the detonation resistance test described in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003, SI 2003/1082, Sch 2 the 'detonation resistance test'; or (b) 15.75% or less by weight and unrestricted combustible materials, and which are capable of self-sustaining decomposition according to the UN Trough Test specified in United Nations Recommendations on the Transport

- of Dangerous Goods: Manual of Tests and Criteria (3rd revised Edn), Pt III sub-s 38.2), col 2, 5,000, col 3, 10,000;
- 238 (2) Ammonium nitrate (as described in Sch 1 Pt 2 note 2 (as so substituted), ie straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound or composite fertilisers in which the nitrogen content as a result of ammonium nitrate is (a) more than 24.5% by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90%; (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate; or (c) more than 28% by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90%, and which satisfy the detonation resistance test), col 2, 1,250, col 3, 5,000;
- 239 (3) Ammonium nitrate (as described in Sch 1 Pt 2 note 3 (as so substituted), ie (a) ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is (i) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances; or (ii) more than 28% by weight, and which contain not more than 0.2% combustible substances; and (b) aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight), col 2, 350, col 3, 2,500;
- 240 (4) Ammonium nitrate (as described in Sch 1 Pt 2 note 4 (as so substituted), ie (a) material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Sch 1 Pt 2 notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Sch 1 Pt 2 notes 2 and 3; or (b) fertilisers which do not fall within Sch 1 Pt 2 notes 1(a) and 2 because they do not satisfy the detonation resistance test, other than fertilisers which (i) at the time of delivery to a final user satisfied the detonation resistance test; but (ii) later became degraded or contaminated; and (iii) are temporarily present at the establishment of the final user prior to their return for reworking, recycling or treatment for safe use or to their being applied as fertiliser), col 2, 10, col 3, 50;
- 241 (5) Potassium nitrate (as described in Sch 1 Pt 2 note 5 (as so substituted), ie composite potassium nitrate-based fertilisers composed of potassium nitrate in prilled/granular form), col 2, 5,000, col 3, 10,000;
- 242 (6) Potassium nitrate (as described in Sch 1 Pt 2 note 6 (as so substituted), ie composite potassium nitrate-based fertilisers composed of potassium nitrate in crystalline form), col 2, 1,250, col 3, 5,000;
- 243 (7) Arsenic pentoxide, arsenic (V) acid and/or salts, col 2, 1, col 3, 2;
- 244 (8) Arsenic trioxide, arsenious (III) acid and/or salts, col 2, 0.1, col 3, 0.1;
- 245 (9) Bromine, col 2, 20, col 3, 100;
- 246 (10) Chlorine, col 2, 10, col 3, 25;
- 247 (11) Nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide), col 2, 1, col 3, 1;
- 248 (12) Ethyleneimine, col 2, 10, col 3, 20;
- 249 (13) Fluorine, col 2, 10, col 3, 20;
- 250 (14) Formaldehyde (concentration = >90%), col 2, 5, col 3, 50;
- 251 (15) Hydrogen, col 2, 5, col 3, 50;
- 252 (16) Hydrogen chloride (liquefied gas), col 2, 25, col 3, 250;
- 253 (17) Lead alkyls, col 2, 5, col 3, 50;
- 254 (18) Liquefied extremely flammable gases (including LPG) and natural gas (whether liquefied or not), col 2, 50, col 3, 200;
- 255 (19) Acetylene, col 2, 5, col 3, 50;

- 256 (20) Ethylene oxide, col 2, 5, col 3, 50;
- 257 (21) Propylene oxide, col 2, 5, col 3, 50;
- 258 (22) Methanol, col 2, 500, col 3, 5,000;
- 259 (23) 4, 4-Methylenebis (2-chloraniline) and/or salts, in powder form, col 2, 0.01, col 3, 0.01;
- 260 (24) Methylisocyanate, col 2, 0.15, col 3, 0.15;
- 261 (25) Oxygen, col 2, 200, col 3, 2,000;
- 262 (26) Toluene diisocyanate, col 2, 10, col 3, 100;
- 263 (27) Carbonyl dichloride (phosgene), col 2, 0.3, col 3, 0.75;
- 264 (28) Arsenic trihydride (arsine), col 2, 0.2, col 3, 1;
- 265 (29) Phosphorus trihydride (phosphine), col 2, 0.2, col 3, 1;
- 266 (30) Sulphur dichloride, col 2, 1, col 3, 1;
- 267 (31) Sulphur trioxide, col 2, 15, col 3, 75;
- 268 (32) Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent, col 2, 0.001, col 3, 0.001;
- 269 (33) the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl and 1,3-Propanesultone, col 2, 0.5, col 3, 2;
- 270 (34) petroleum products, ie (a) gasolines and naphthas; (b) kerosenes (including jet fuels); (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams), col 2, 2,500, col 3, 25,000.

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the International Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS): see Sch 1 Pt 2 note 7 (as so substituted).

15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate; 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate; and 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate: Sch 1 Pt 2 note 8 (as so substituted).

Schedule 1 Pt 3 lists categories of substances and preparations not specifically named in Sch 1 Pt 2. Those categories, and the specified quantities in tonnes, are as follows (numbered as in Sch 1 Pt 3 (as so substituted)):

- 271 (A) very toxic, col 2, 5, col 3, 20;
- 272 (B) toxic, col 2, 50, col 3, 200;
- 273 (C) oxidising, col 2, 50, col 3, 200;
- 274 (D) explosive (where the substance, preparation or article is an explosive within UN/ADR Division 1.4), col 2, 50, col 3, 200;
- 275 (E) explosive (where the substance, preparation or article is an explosive within UN/ADR Division 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3), col 2, 10, col 3, 50;
- 276 (F) flammable (where the substance or preparation falls within the definition given in Sch 1 Pt 3 note 3(a)), col 2, 5,000, col 3, 50,000;
- 277 (G) (aa) highly flammable (where the substance or preparation falls within the definition given in Sch 1 Pt 3 note 3(b)(i)), col 2, 50, col 3, 200; (bb) highly flammable liquids (where the

substance or preparation falls within the definition given in Sch 1 Pt 3 note 3(b)(iii), col 2, 5,000, col 3, 50,000;

- 278 (H) extremely flammable (where the substance or preparation falls within the definition given in Sch 1 Pt 3 note 3(c)), col 2, 10, col 3, 50;
- 279 (I) dangerous for the environment in combination with risk phrases (aa) R50: 'Very toxic to aquatic organisms', col 2, 100, col 3, 200; (bb) R51: 'Toxic to aquatic organisms' and R53: 'May cause long-term adverse effects in the aquatic environment', col 2, 200, col 3, 500;
- 280 (J) any classification not covered by those given above in combination with risk phrases (aa) R14: 'Reacts violently with water' (including R14/15), col 2, 100, col 2, 500; (bb) R29: 'in contact with water, liberates toxic gas', col 2, 50, col 3, 200.

Substances and preparations must be classified for these purposes according to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716, reg 4 (see PARA 571) whether or not the substance or preparation is required to be classified for the purposes of those regulations; in the case of substances and preparations with properties giving rise to more than one classification, for the purposes of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, the lowest qualifying quantities apply. However, for the application of the rule in Sch 1 Pt 3 note 4 (rules to be applied in the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant qualifying quantities), the qualifying quantity used must always be the one corresponding to the classification concerned: Sch 1 Pt 3 note 1 (as so substituted).

An 'explosive' means (I) a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2); (II) a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3); or (III) a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by EC Council Directive 94/55 of 21 November 1994 (OJ L319, 12.12.1994, p 7) on the approximation of the laws of the member states with regard to the transport of dangerous goods by road (repealed: see now European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13) on the inland transport of dangerous goods); Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 1 Pt 3 note 2 (as so substituted). Included in this definition are pyrotechnics, which for the purposes of the 1999 regulations mean substances (or mixtures of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions: Sch 1 Pt 3 note 2 (as so substituted).

Where a substance or preparation is classified by both UN/ADR and risk phrase R2 or R3, the UN/ADR classification takes precedence over assignment of risk phrases. Substances and articles of Class 1 are classified in Divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The Divisions concerned are:

- 281 (Ai) Division 1.1: 'Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously)';
- 282 (Aii) Division 1.2: 'Substances and articles which have a projection hazard but not a mass explosion hazard';
- 283 (Aiii) Division 1.3: 'Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard (AA) combustion of which gives rise to considerable radiant heat; or (BB) which burn one after another, producing minor blast or projection effects or both';
- 284 (Aiv) Division 1.4: 'Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package';
- 285 (Av) Division 1.5: 'Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test';
- 286 (Avi) Division 1.6: 'Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article'.

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the

substance or preparation contained is known, that quantity must be considered for the purposes of the 1999 regulations. If the quantity is not known, then, for the purposes of those regulations, the whole article must be treated as explosive: Sch 1 Pt 3 note 2 (as so substituted).

'Flammable', 'highly flammable', and 'extremely flammable' in categories 6, 7 and 8 mean: (Aa) flammable liquids: substances and preparations having a flash point equal to or greater than 21 degrees C and less than or equal to 55 degrees C (risk phrase R10), supporting combustion; (Ab) highly flammable liquids: ie substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy (risk phrase R17); substances and preparations which have a flash point lower than 55 degrees C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards; substances and preparations having a flash point lower than 21 degrees C and which are not extremely flammable (risk phrase R11, second indent); and (Ac) extremely flammable gases and liquids: ie liquid substances and preparations which have a flash point lower than 0 degrees C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal pressure is less than or equal to 35 degrees C (risk phrase R12, first indent); and gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), which are in a gaseous or supercritical state; and flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point: Sch 1 Pt 3 note 3 (as so substituted).

In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant qualifying quantities, the rules set out in Sch 1 Pt 3 note 4 must be applied to determine the application of the 1999 regulations to the establishment: Sch 1 Pt 3 note 4 (as so substituted). The rules are to be used to assess the overall hazards associated with toxicity, flammability and eco-toxicity and must therefore be applied three times, and the relevant provisions of the regulations apply if any of the sums thereby obtained is greater than or equal to 1: Sch 1 Pt 3 note 4 (as so substituted).

7 Any reference for these purposes to the storage of dangerous substances includes a reference to the presence of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(4). 'Road' means, in relation to England and Wales, a road within the meaning of the Road Traffic Act 1988 s 192(1) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).

8 'Pipeline' means a pipeline to which the Pipelines Safety Regulations 1996, SI 1996/825, apply (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 610): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).

9 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 3(2).

10 See **ARMED FORCES** vol 2(2) (Reissue) PARA 150.

11 Ie within the meaning of any of the provisions of the Visiting Forces Act 1952 Pt I (ss 1-12): see **ARMED FORCES** vol 2(2) (Reissue) PARA 140.

12 Ie for the purposes of the Nuclear Installations Act 1965 s 1: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487.

13 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 3(3) (amended by SI 2005/1088).

14 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 3(5).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(3) MAJOR ACCIDENT HAZARDS AND RADIATION EMERGENCIES/(i) Major Accident Hazards/663. General duties of operator.

### **663. General duties of operator.**

Every operator<sup>1</sup> must take all measures necessary to prevent major accidents<sup>2</sup> and limit their consequences to persons and the environment<sup>3</sup>.

Every operator must without delay but at all events within three months after the establishment becomes subject to this requirement prepare, and thereafter keep, a document setting out his policy with respect to the prevention of major accidents (a 'major accident prevention policy document')<sup>4</sup>. That policy must be designed to guarantee a high level of protection for persons and the environment by appropriate means, structures and management systems<sup>5</sup>. The major accident prevention policy document must:

- 1308 (1) take account of the specified principles<sup>6</sup>; and
- 1309 (2) include sufficient particulars to demonstrate that the operator has established a safety management system which takes account of the specified principles<sup>7</sup>.

In the event of the modification of the establishment or installation, the process carried on there, or the nature or quantity of dangerous substances present<sup>8</sup> there which could, in each case, have significant repercussions with respect to the prevention of major accidents, the operator must review and where necessary revise the major accident prevention policy document<sup>9</sup>. The operator must implement the policy set out in his major accident prevention policy document<sup>10</sup>. These requirements do not, however, apply<sup>11</sup> to an establishment<sup>12</sup> in respect of which a safety report is required<sup>13</sup>.

Within a reasonable period of time prior to the start of construction<sup>14</sup> of an establishment the operator of the establishment must send to the competent authority<sup>15</sup> a notification<sup>16</sup> containing the specified information<sup>17</sup>. Within a reasonable period of time prior to the start of the operation<sup>18</sup> of an establishment, its operator must send to the competent authority a notification containing the specified information<sup>19</sup>, except that this does not require the notification to contain information already contained in a previous notification<sup>20</sup> if that information is still valid<sup>21</sup>. In the case of an existing establishment<sup>22</sup>, the latter requirement was to be met by 3 February 2000<sup>23</sup>. Where the foregoing provisions do not apply, the operator of the establishment must send to the competent authority a notification containing the specified information within three months after the establishment becomes subject to these requirements<sup>24</sup>.

The operator must notify the competent authority forthwith in the event of:

- 1310 (a) there being any significant increase in the quantity<sup>25</sup> of dangerous substances notified under these provisions, or in a previous report<sup>26</sup>;
- 1311 (b) there being any significant change in the nature or physical form of the dangerous substances so notified, the processes employing them or any other information notified to the competent authority under these provisions in respect of the establishment;
- 1312 (c) modification of the establishment or an installation which could have significant repercussions with respect to the prevention of major accidents;

- 1313 (d) the requirement for a safety report<sup>27</sup> ceasing to apply to the establishment by virtue of a change in the quantity of dangerous substances present there; or  
 1314 (e) permanent closure of an installation in the establishment<sup>28</sup>.

The above provisions do not require the notification of any information which has been included in a safety report<sup>29</sup>.

1 For these purposes, any reference to an operator is a reference to a person who is in control of the operation of an establishment or installation (or in relation to an establishment or installation which is to be constructed or operated, the person who proposes to control its operation or, if that person is not known, the person who in the course of a trade, business or other undertaking carried on by him has commissioned its design and construction); and any duty imposed by the relevant regulations on him extends only in relation to that establishment or installation: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1), (2). As to the meaning of 'establishment' see PARA 662 note 3. 'Installation' means a unit in which dangerous substances present are, or are intended to be, produced, used, handled or stored, and it includes (1) equipment, structures, pipework, machinery and tools; (2) railway sidings, docks and unloading quays serving the unit; and (3) jetties, warehouses or similar structures, whether floating or not, which are necessary for the operation of the unit: reg 2(1). As to the meaning of 'dangerous substance' see PARA 662 note 4.

2 'Major accident' means an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of the operation of any establishment and leading to serious danger to human health or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).

3 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 4.

4 Control of Major Accident Hazards Regulations 1999, SI 1999/743, regs 2(1), 5(1) (reg 5(1) substituted by SI 2005/1088).

5 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(2).

6 The principles specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 2 paras 1, 2. For the purpose of implementing the operator's major accident prevention policy and safety management system account must be taken of the following elements. The requirements laid down in the major accident prevention policy document should be proportionate to the major accident hazards presented by the establishment: Sch 2 para 1. The major accident prevention policy should be established in writing and should include the operator's overall aims and principles of action with respect to the control of major accident hazards: Sch 2 para 2.

7 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(3). The specified principles are those set out in Sch 2 paras 3, 4. The safety management system should include the part of the general management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major accident prevention policy: Sch 2 para 3. The following issues must be addressed by the safety management system (Sch 2 para 4 (amended by SI 2005/1088)):

- 287 (1) organisation and personnel: the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation; the identification of training needs of such personnel and the provision of the training so identified; the involvement of persons working in the establishment;
- 288 (2) identification and evaluation of major hazards: adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operation and the assessment of their likelihood and severity;
- 289 (3) operational control: adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;
- 290 (4) management of change: adoption and implementation of procedures for planning modifications to, or the design of new installations, processes or storage facilities;
- 291 (5) planning for emergencies: adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis; to prepare, test and review emergency plans to



respond to such emergencies; and to provide specific training for all persons working in the establishment;

- 292 (6) monitoring performance: adoption and implementation of procedures for the on-going assessment of compliance with the objectives set by the operator's major accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in the case of non-compliance; the procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;
- 293 (7) audit and review: adoption and implementation of procedures for periodic systematic assessment of the major accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

8 As to the presence of dangerous substances see PARA 662 note 5.

9 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(4).

10 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(5).

11 Ie subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1 para 1 and Sch 4 Pt 2 para 1: see PARA 664.

12 Ie an establishment to which the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7 applies: see PARA 664.

13 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(6).

14 Any reference for these purposes to the start of construction or operation of an establishment is, subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(6) (see note 18), a reference to the start of construction or operation, as the case may be, of the installation in the establishment, or where there is or is to be more than one installation in the establishment, the one whose construction or operation, as the case may be, is first started, and where an installation in an establishment has been constructed, or its construction has been started, before 1 April 1999, regs 6(1), 7(1) do not apply in respect of that establishment: reg 2(5).

15 'Competent authority' means the Health and Safety Executive and the Environment Agency acting jointly: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1). As to the Health and Safety Executive see PARA 361 et seq; and as to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

16 'Notify' means notify in writing, including in an email, or by such other means as the recipient may allow and 'notification' is to be construed accordingly: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1) (definition substituted by SI 2005/1088).

17 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(1). The information referred to in the text is that specified in reg 6(1), Sch 3. The information referred to in reg 6(1) is as follows: (1) the name and address of the operator; (2) the address of the establishment concerned; (3) the name or position of the person in charge of the establishment; (4) information sufficient to identify the dangerous substances or category of dangerous substances present; (5) the quantity and physical form of the dangerous substances present, including, in relation to petroleum products listed in Sch 1 Pt 2 (see PARA 662 note 6 head (34)), the quantity falling within each of classes (a)-(c); (6) a description of the activity or proposed activity of the installation concerned; (7) details of the elements of the immediate environment liable to cause a major accident or to aggravate the consequences thereof: Sch 3 (amended by SI 2005/1088).

18 Where after 1 April 1999 an establishment becomes subject to any of the relevant regulations by reason of any increase in the quantity of dangerous substances present there, any reference in that regulation to the start of operation of the establishment, is a reference to the time when the establishment first becomes so subject: reg 2(6).

19 Ie the information specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 3: see note 17.

20 Ie a notification sent pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(1).

21 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(2).

22 Any reference in a relevant regulation to an existing establishment is a reference to an establishment whose operation commenced before 1 April 1999 and which, on that date, was an establishment to which that regulation applies: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(7).

23 See the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(2). Regulation 6(2) does not apply to an existing establishment in respect of which a report has been sent to the Executive in accordance with the Control of Industrial Major Accident Hazards Regulations 1984, SI 1984/1902, reg 7 (revoked): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(3).

24 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(3A) (added by SI 2005/1088).

25 As to the specified quantities of dangerous substances see PARA 662.

26 Ie in the report referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(3): see note 23.

27 Ie the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7: see PARA 664.

28 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(4).

29 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6(5). 'Safety report' means a report sent to the competent authority pursuant to reg 7 or a part of a report sent to the competent authority pursuant to reg 7(10) except that where any such report or part has been revised pursuant to reg 8, it means the report or part as so revised: reg 2(1). As to safety reports see PARA 664.

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#### **664. Safety reports.**

Within a reasonable period of time prior to the start of construction<sup>1</sup> of an establishment<sup>2</sup>, the operator<sup>3</sup> of the establishment must<sup>4</sup> send to the competent authority<sup>5</sup> a report containing information which is sufficient for the purpose of demonstrating that adequate safety and reliability have been incorporated into the design and construction of any installation and equipment and structure connected with its operation which are linked to major accident hazards within the establishment<sup>6</sup>, and comprising at least such of the specified information<sup>7</sup> as is relevant for that purpose<sup>8</sup>. That report may comprise more than one document sent to the competent authority at different times within the above-mentioned period<sup>9</sup>; and nothing in this provision requires the report to contain information which it would not be reasonable to expect the operator to have at the time of sending the report<sup>10</sup>.

Without prejudice to the requirements of the relevant regulation prohibiting use<sup>11</sup>, an operator must ensure that the construction of an establishment is not started until he has received from the competent authority the conclusions of its examination of the report so sent<sup>12</sup>.

Within a reasonable period of time prior to the start of the operation<sup>13</sup> of an establishment, the operator of the establishment must<sup>14</sup> send to the competent authority a report containing information which is sufficient for the specified purposes<sup>15</sup> and comprising at least the specified information<sup>16</sup>, except that this does not require the report to contain information already contained in the report previously sent<sup>17</sup> if that information is still valid<sup>18</sup>. Without prejudice to the requirements of the relevant regulation prohibiting use<sup>19</sup>, an operator must ensure that the operation of an establishment is not started until he has received from the competent authority the conclusions of its examination of the report so sent<sup>20</sup>.

The operator of an existing establishment<sup>21</sup> was to send to the competent authority a report containing information which was sufficient for the specified purposes<sup>22</sup> and comprising at least the specified information<sup>23</sup>. That report was to be sent<sup>24</sup>:

- 1315 (1) in the case of an establishment in respect of which a CIMAH report<sup>25</sup> had been sent to the Health and Safety Executive<sup>26</sup>:
- 163
- 265. (a) within such period after 1 April 1999 that a report would have been required to have been sent to the Executive pursuant to the previous regulations, if they had remained in force<sup>27</sup>; or
- 266. (b) by 3 February 2001, whichever was the earlier<sup>28</sup>;
- 164
- 1316 (2) in any other case by 3 February 2002<sup>29</sup>.

Where the provisions above<sup>30</sup> do not apply, the operator must<sup>31</sup>, without delay, but at all events within one year after the establishment becomes subject to these provisions, send to the competent authority a report which is sufficient for the specified purpose<sup>32</sup> and comprising at least the specified information<sup>33</sup>.

All or part of the information required to be included in a safety report<sup>34</sup> may be so included in a safety report by reference to information contained in another report or notification sent to the competent authority, the Executive or the Environment Agency<sup>35</sup> pursuant to a requirement

imposed by or under any enactment or contained in an application for a hazardous substances consent<sup>36</sup>. Where it is demonstrated by the operator of the establishment to the satisfaction of the competent authority that particular dangerous substances present<sup>37</sup> at an establishment, or any part of it, are in a state incapable of creating a major accident hazard, the competent authority may in writing and in accordance with criteria established by the European Commission<sup>38</sup> limit the information required to be included in the safety report for the establishment to those matters which are relevant to the prevention of residual major accident hazards and the limitation of their consequences for persons and the environment<sup>39</sup>.

An operator must provide to the competent authority such further information as it may reasonably request in writing following its examination of the safety report, and the information must be so provided within such period as the competent authority specifies in the request<sup>40</sup>.

Where a safety report has been sent to the competent authority the operator must<sup>41</sup> review it:

- 1317 (i) whenever the operator makes a change to the safety management system<sup>42</sup> which could have significant repercussions with respect to the prevention of major accidents or the limitation of consequences of major accidents to persons and the environment;
- 1318 (ii) whenever such a review is necessary because of new facts or to take account of new technical knowledge about safety matters; and
- 1319 (iii) fully at least every five years<sup>43</sup>,

and where in consequence of that review it is necessary to revise the report, the operator must do so forthwith and notify the competent authority of the details of such revision<sup>44</sup>.

Where an operator proposes to modify the establishment or installation in it, the process carried on there or the nature or quantity of dangerous substances present there and that modification could have significant repercussions with respect to the prevention of major accidents or the limitation of consequences of major accidents to persons and the environment, he must in advance of such modification review, and where necessary revise, the safety report prepared in respect of the establishment, installation, process or dangerous substances as the case may be and must notify the competent authority of the details of such revision<sup>45</sup>.

1 As to the meaning of references to the start of construction see PARA 663 note 14.

2 As to the meaning of 'establishment' see PARA 662 note 3.

3 As to the meaning of 'operator' see PARA 663 note 1.

4 I.e. subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(12): see the text and notes 33-35.

5 As to the meaning of 'competent authority' see PARA 663 note 15.

6 I.e. the purpose specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1 para 3(a). As to the meaning of 'installation' see PARA 663 note 1.

7 I.e. the information specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 2. The information referred to in reg 7(1), (5) and (7) is as follows (Sch 4 Pt 2 (amended by SI 2005/1088):

294 (1) information on the management system and on the organisation of the establishment with a view to major accident prevention; and this information must contain the elements set out in Sch 2 (see PARA 663);

295 (2) presentation of the environment of the establishment: (a) description of the site and its environment including the geographical location, meteorological, geological, hydrographic conditions and, if necessary, its history; (b) identification of installations and other activities of the establishment which could present a major accident hazard; (c) description of areas where a major accident may occur;

- 296 (3) description of installation: (a) a description of the main activities and products of the parts of the establishment which are important from the point of view of safety, sources of major accident risks and conditions under which such a major accident could happen, together with a description of proposed preventive measures; (b) description of processes, in particular the operating methods; (c) description of dangerous substances:
14. (i) inventory of dangerous substances including (A) the identification of dangerous substances: chemical name, the number allocated to the substance by the Chemicals Abstract Service, name according to International Union of Pure and Applied Chemistry nomenclature; (B) the maximum quantity of dangerous substances present;  
14
15. (ii) physical, chemical, toxicological characteristics and indication of the hazards, both immediate and delayed for people and the environment;  
15
16. (iii) physical and chemical behaviour under normal conditions of use or under foreseeable accidental conditions;  
16
- 297 (4) identification and accidental risks analysis and prevention methods: (a) detailed description of the possible major accident scenarios and their probability or the conditions under which they occur including a summary of the events which may play a role in triggering each of these scenarios, the causes being internal or external to the installation; (b) assessment of the extent and severity of the consequences of identified major accidents including maps, images or, as appropriate, equivalent descriptions, showing areas which are liable to be affected by such accidents arising from the establishment; (c) description of technical parameters and equipment used for the safety of installations;
- 298 (5) measures of protection and intervention to limit the consequences of an accident: (a) description of the equipment installed in the plant to limit the consequences of major accidents; (b) organisation of alert and intervention; (c) description of mobilisable resources, internal or external; (d) summary of elements described in heads (a), (b) and (c) above necessary for drawing up the on-site emergency plan;
- 299 (6) the names of the relevant organisations involved in the drawing up of the report.

As to the meaning of 'major accident' see PARA 663 note 2; and as to the meaning of 'dangerous substance' see PARA 662 note 4.

8 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(1).

9 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(2).

10 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(3).

11 I.e. the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18 (prohibition of use): see PARA 667.

12 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(4).

13 As to the meaning of references to the start of the operation see PARA 663 notes 14, 18.

14 See note 4.

15 I.e. for the purposes specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1. The purposes referred to in reg 7 are as follows: (1) demonstrating that a major accident prevention policy and a safety management system for implementing it have been put into effect in accordance with the information set out in Sch 2 (see PARA 663); (2) demonstrating that major accident hazards have been identified and that the necessary measures have been taken to prevent such accidents and to limit their consequences for persons and the environment; (3) demonstrating that adequate safety and reliability have been incorporated into the (a) design and construction, and (b) operation and maintenance, of any installation and equipment and structure connected with its operation which are linked to major accident hazards within the establishment; (4) demonstrating that on-site emergency plans have been drawn up and supplying information to enable the off-site plan to be drawn up in order to take the necessary measures in the event of a major accident; (5) providing sufficient information to the competent authority to enable decisions to be made in terms of the siting of new activities or developments around establishments: Sch 4 Pt 1. As to emergency plans see PARA 665.

- 16 le the information specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 2: see note 7.
- 17 le sent pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(1).
- 18 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(5).
- 19 See note 4.
- 20 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(6).
- 21 As to the meaning of 'existing establishment' see PARA 663 note 22.
- 22 le the purposes specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1: see note 15.
- 23 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(7). The information referred to is that specified in Sch 4 Pt 2: see note 7.
- 24 le subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(10): see note 28.
- 25 'CIMAHA report' means a report sent to the Health and Safety Executive pursuant to the Control of Industrial Major Accident Hazards Regulations 1984, SI 1984/1902, reg 7 or reg 8 (both revoked): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).
- 26 As to the Health and Safety Executive see PARA 361 et seq.
- 27 le pursuant to the Control of Industrial Major Accident Hazards Regulations 1984, SI 1984/1902, reg 8(2) (revoked) if the 1984 regulations had remained in force.
- 28 le except that where the period referred to expired before 3 February 2000 or such later date (no later than 3 February 2001) as might be agreed in writing by the competent authority in respect of the establishment concerned, the report might be sent at any time before that date: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(8)(a), (9). Where, in a case referred to in reg 7(8)(a) (see head (a) in the text), different CIMAHA reports have been sent to the Executive relating to different industrial activities undertaken at the same establishment, (1) it is sufficient compliance with reg 7(7) if the report referred to therein is sent to the competent authority in parts, each part relating to an industrial activity to which a CIMAHA report related and containing, in respect of that activity, the information referred to in reg 7(7); and (2) where head (1) above is relied on, reg 7(8)(a) has effect in relation to each part as if the reference in reg 7(8)(a)(i) (see head (1)(a) in the text) to a report were a reference to the report relating to the industrial activity concerned; and 'industrial activity' has the same meaning as it has in the 1984 regulations: regs 2(1), 7(10).
- 29 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(8).
- 30 le the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(1)-(10).
- 31 le subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(12): see the text and notes 37-39.
- 32 le the purposes specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1: see note 15.
- 33 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(10A) (added by SI 2005/1088). The information referred to is that specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 2: see note 7.
- 34 As to the meaning of 'safety report' see PARA 663 note 29.
- 35 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 36 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(11). 'Hazardous substances consent' means a hazardous substances consent granted under the Planning (Hazardous Substances) Act 1990 (see **TOWN AND COUNTRY PLANNING**): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).
- 37 As to the presence of dangerous substances see PARA 662 note 5.

- 38    le pursuant to EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) art 9.6(b).
- 39    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(12).
- 40    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(13).
- 41    le subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 8(3): see note 44.
- 42    le the safety management system referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 4 Pt 1 para 1: see note 15 head (1).
- 43    Where a safety report has been reviewed pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 8(1)(c) (see head (iii) in the text) but not revised, the operator must notify the competent authority of that fact: reg 8(2) (amended by SI 2005/1088).
- 44    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 8(1) (substituted by SI 2005/1088). Where, pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 7(10), a report has been sent to the competent authority in parts, each part must be reviewed pursuant to reg 8(1)(c) within five years from the time that part was sent and at least every five years after that review; and every review of the last part sent must include consideration of whether the parts together contain, in relation to the establishment, all the information referred to in reg 7(7): reg 8(3) (amended by SI 2005/1088).
- 45    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 8(4) (amended by SI 2005/1088).

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### **665. Emergency plans.**

Every operator<sup>1</sup> of an establishment<sup>2</sup> must prepare an emergency plan (an 'on-site emergency plan') which must be adequate for securing the specified objectives<sup>3</sup> and must contain the specified information<sup>4</sup>. In the case of an existing establishment<sup>5</sup> where the industrial activity<sup>6</sup> carried on there was, immediately before 1 April 1999, subject to the requirements of previous relevant regulations<sup>7</sup>, the on-site emergency plan was to be prepared by 3 February 2001<sup>8</sup>. In the case of any other existing establishment, it was to be prepared by 3 February 2002<sup>9</sup>. In the case of an establishment which has not started to operate, the on-site emergency plan is to be prepared before it starts to operate<sup>10</sup>, and in any other case, the plan must be prepared without delay but at all events within one year after the establishment becomes subject to these provisions<sup>11</sup>.

The operator must consult:

- 1320 (1) persons working in the establishment;
- 1321 (2) the Environment Agency<sup>12</sup>;
- 1322 (3) the emergency services<sup>13</sup>; and
- 1323 (4) the health authority<sup>14</sup> for the area where the establishment is situated,

on the preparation of the on-site emergency plan<sup>15</sup>. Except where the local authority<sup>16</sup> has been exempted from the requirement to prepare an off-site emergency plan in respect of the establishment<sup>17</sup>, the operator must also consult the local authority in whose area the establishment is situated on the preparation of an on-site emergency plan<sup>18</sup>.

The local authority in whose area there is an establishment must prepare an emergency plan (an 'off-site emergency plan') in respect of that establishment, and such a plan must be adequate for securing the specified objectives<sup>19</sup> and must contain the specified information<sup>20</sup>. The off-site emergency plan must be prepared no later than six months (or such longer period, not exceeding nine months, as the competent authority<sup>21</sup> may agree in writing) after:

- 1324 (a) the receipt by the local authority of a notice from the competent authority informing the local authority of the need to prepare an off-site emergency plan in respect of the establishment;
- 1325 (b) the time an on-site emergency plan is required to be prepared for the establishment pursuant to the provisions set out above; or
- 1326 (c) the receipt by the local authority of the necessary information<sup>22</sup>,

whichever is later<sup>23</sup>. An operator must supply to the local authority in whose area the establishment is situated the information necessary for the purpose of enabling the authority to prepare the off-site emergency plan<sup>24</sup>; and that information must be supplied no later than the time an on-site emergency plan is required to be prepared for the establishment<sup>25</sup>. The operator must also supply to the local authority any additional information it may reasonably request in writing to enable the off-site emergency plan to be prepared, and the information must be so provided within such period as the local authority specifies in the request<sup>26</sup>. The local authority must consult the operator, the competent authority, the Environment Agency, the emergency services, each health authority for the area in the vicinity of the establishment and such



members of the public as it considers appropriate on the preparation of the off-site emergency plan<sup>27</sup>.

The competent authority may in view of the information contained in a safety report<sup>28</sup> exempt a local authority from the requirement to prepare an off-site emergency plan in respect of an establishment, and any such exemption must be in writing and state the reasons for granting it<sup>29</sup>. Where an exemption has been so given and while it is in force, the local authority has no function for the purposes of the relevant regulations<sup>30</sup> in relation to the preparation, review, testing and putting into effect of an off-site emergency plan for the establishment concerned<sup>31</sup>.

A person who has prepared an emergency plan pursuant to a duty imposed on him by the relevant regulations must at suitable intervals not exceeding three years:

- 1327 (i) review and where necessary revise the plan; and
- 1328 (ii) test the plan and take reasonable steps to arrange for the emergency services to participate in the test to such extent as is necessary,

and any such review must take into account changes occurring in the establishment to which the plan relates and within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents and, in the case of a review of an off-site emergency plan, must involve consultation by the local authority of such members of the public as it considers appropriate<sup>32</sup>. The local authority must endeavour to reach agreement with the operator and the emergency services as to how the off-site emergency plan is to be tested<sup>33</sup>.

A person who has prepared an emergency plan pursuant to a duty imposed on him by the relevant regulations must take reasonable steps to put it into effect without delay when a major accident occurs or an uncontrolled event occurs which could reasonably be expected to lead to a major accident<sup>34</sup>.

1 As to the meaning of 'operator' see PARA 663 note 1.

2 As to the meaning of 'establishment' see PARA 662 note 3.

3 The objectives specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 5 Pt 1. Those objectives are (1) containing and controlling incidents so as to minimise the effects, and to limit damage to persons, the environment and property; (2) implementing the measures necessary to protect persons and the environment from the effects of major accidents; (3) communicating the necessary information to the public and to the emergency services and authorities concerned in the area; (4) providing for the restoration and clean-up of the environment following a major accident: Sch 5 Pt 1 paras 1-4. As to the meaning of 'major accident' see PARA 663 note 2; and as to the meaning of 'emergency services' see note 13.

4 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(1). The information referred to in the text is that specified in Sch 5 Pt 2. The information referred to in reg 9(1) is as follows: (1) names or positions of persons authorised to set emergency procedures in motion and the person in charge of and co-ordinating the on-site mitigatory action; (2) name or position of the person with responsibility for liaison with the local authority responsible for preparing the off-site emergency plan; (3) for foreseeable conditions or events which could be significant in bringing about a major accident, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available; (4) arrangements for limiting the risks to persons on site including how warnings are to be given and the actions persons are expected to take on receipt of a warning; (5) arrangements for providing early warning of the incident to the local authority responsible for setting the off-site emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available; (6) arrangements for training staff in the duties they will be expected to perform, and where necessary co-ordinating this with the emergency services; (7) arrangements for providing assistance with off-site mitigatory action: Sch 5 Pt 2 paras 1-7. As to the meaning of 'local authority' see note 15.

5 As to the meaning of 'existing establishment' see PARA 663 note 22.

6 As to the meaning of 'industrial activity' see PARA 664 note 28.

7     le subject to the Control of Industrial Major Accident Hazards Regulations 1984, SI 1984/1902, reg 10 (revoked).

8     Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(2)(a).

9     Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(2)(b).

10    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(2)(c) (substituted by SI 2005/1088). As to the start of operations see PARA 663 notes 14, 18.

11    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(2)(d) (added by SI 2005/1088).

12    As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

13    'Emergency services' means (1) those police, fire and ambulance services who are liable to be required to respond to an emergency at the establishment; (2) where appropriate, Her Majesty's Coastguard: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1).

14    'Health authority' means (1) in relation to England, a Primary Care Trust established under the National Health Service Act 1977 s 16A; (2) in relation to Wales, a local health board: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 2(1) (definition substituted by SI 2002/2469); References to Health Authorities Order 2007, SI 2007/961.

15    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(3).

16    Except for the purposes of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14 (see PARA 666), 'local authority' means, in relation to (1) London, the London Fire and Emergency Planning Authority; (2) an area where there is a fire and civil defence authority, that authority; (3) the Isles of Scilly, the Council of the Isles of Scilly; (4) an area in the rest of England, the county council for that area, or where there is no county council for that area, the district council for that area; (5) an area in Scotland, the council for the local government area; (6) an area in Wales, the county council or the county borough council for that area: reg 2(1) (definition amended by virtue of the Greater London Authority Act 1999 s 328(7)).

17    le pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(7): see the text and notes 28-29.

18    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 9(4).

19    le the objectives specified in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 5 Pt 1: see note 3.

20    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(1). The information referred to in the text is that specified in Sch 5 Pt 3. The information referred to in reg 10(1) is as follows: (1) names or positions of persons authorised to set emergency procedures in motion and of persons authorised to take charge of and co-ordinate off-site action; (2) arrangements for receiving early warning of incidents, and alert and call-out procedures; (3) arrangements for co-ordinating resources necessary to implement the off-site emergency plan; (4) arrangements for providing assistance with on-site mitigatory action; (5) arrangements for off-site mitigatory action; (6) arrangements for providing the public with specific information relating to the accident and the behaviour which it should adopt; (7) arrangements for the provision of information to the emergency services of other member states in the event of a major accident with possible transboundary consequences: Sch 5 Pt 3 paras 1-7.

See also the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009, SI 2009/1927; and PARAS 748 et seq, 838 et seq.

21    As to the meaning of 'competent authority' see PARA 663 note 15.

22    le the information referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(3), (5): see the text and notes 24, 26.

23    Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(2). A local authority may charge the operator a fee for performing its functions under regs 10, 11: reg 13(1). The fee may not exceed the sum of the costs reasonably incurred by the local authority in performing those functions in relation to the establishment concerned, including (but without prejudice to the generality of the foregoing provision) any costs reasonably incurred by the local authority in arranging for the emergency services to participate in the testing of the off-site emergency plan (see the text and notes 32-33): reg 13(2). When requiring payment the local authority must send or give to the operator a detailed statement of the work done and costs incurred

including the dates of any visits to the establishment and the period to which the statement relates; and the fee, which is recoverable only as a civil debt, becomes payable one month after the statement has been sent or given: reg 13(3).

- 24 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(3).
- 25 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(4).
- 26 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(5).
- 27 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(6) (amended by SI 2005/1088).
- 28 As to the meaning of 'safety report' see PARA 663 note 29.
- 29 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(7).
- 30 le for the purposes of the Control of Major Accident Hazards Regulations 1999, SI 1999/743: see PARA 662 et seq; the text and notes 1-29, 31-34; and PARA 666 et seq.
- 31 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(8).
- 32 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 11(1) (amended by SI 2005/1088).
- 33 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 11(2).
- 34 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 12.

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**666. Provision of information by the operator.**

The operator<sup>1</sup> of an establishment<sup>2</sup> must:

- 1329 (1) ensure that every person who is likely to be in an area notified<sup>3</sup> to the operator by the competent authority<sup>4</sup> as being an area in which, in the opinion of the competent authority, persons are liable to be affected by a major accident<sup>5</sup> occurring at the establishment, and every school, hospital or other establishment serving the public which is situated in such area, is supplied regularly and in the most appropriate form, without their having to request it, with information on safety measures at the establishment and on the requisite behaviour in the event of a major accident at the establishment; and
- 1330 (2) make that information permanently available to the public<sup>6</sup>.

That information must contain at least the specified information<sup>7</sup>.

In preparing the information required to be supplied in accordance with the above provisions, the operator must consult the local authority<sup>8</sup> in whose area the establishment is situated and such other persons who appear to him to be appropriate, but the operator remains responsible for the accuracy, completeness and form of the information so supplied<sup>9</sup>. The operator must ensure that that information is so supplied within a reasonable period of time after the off-site emergency plan<sup>10</sup> has been prepared for the establishment and that the information is so supplied again at intervals not exceeding five years or if it is revised<sup>11</sup>. Without prejudice to his duty to provide the information<sup>12</sup>, the operator must endeavour to enter into an agreement with the local authority in whose area the establishment is situated for that local authority to disseminate the information required to be supplied in accordance with that duty to the persons mentioned in heads (1) and (2) above<sup>13</sup>. The operator must review and where necessary revise that information at intervals not exceeding three years<sup>14</sup> or in the event of a modification:

- 1331 (a) to the establishment or installation, the process carried on there, or the nature or quantity of dangerous substances present there which could (in each case) have significant repercussions with respect to the prevention of major accidents<sup>15</sup>; or
- 1332 (b) to the establishment or installation in it, the process carried on there or the nature or quantity of dangerous substances present there which could have significant repercussions with respect to the prevention of major accidents or the limitation of consequences of major accidents to persons and the environment<sup>16</sup>.

Every operator of an establishment must, when requested to do so by the competent authority, provide sufficient information to the authority to demonstrate that he has taken all measures necessary to comply with the relevant regulations<sup>17</sup>, and the information must be so provided within such period as the competent authority specifies in the request<sup>18</sup>. The operator must<sup>19</sup>, when requested to do so by the competent authority, provide the authority with any information necessary to enable the authority:

- 1333 (i) to fully assess the possibility of a major accident and to determine the scope of possible increased probability or aggravation of a major accident;
- 1334 (ii) to take substances into account which, due to their physical form, particular conditions or location, may require additional consideration; or
- 1335 (iii) to perform its functions of obtaining or collecting information<sup>20</sup>;

and the information must be so provided within such period as the competent authority specifies in the request<sup>21</sup>. Where a major accident has occurred at an establishment the operator must forthwith inform the competent authority of that accident<sup>22</sup>.

The competent authority must, using the information received from operators in notifications sent to it<sup>23</sup> and in safety reports<sup>24</sup>, designate groups of establishments where the likelihood or consequences of a major accident may be increased because of the location and proximity of establishments in the group and the dangerous substances<sup>25</sup> present there<sup>26</sup>. The competent authority must notify each operator of an establishment in a group so designated of the names and addresses of other establishments within the same group<sup>27</sup>. The operator of any establishment in a group so designated must:

- 1336 (A) pass appropriate information about the establishment to other establishments in the group to enable them to take account of the nature and extent of the overall hazard of a major accident in their major accident prevention policy documents<sup>28</sup>, safety reports and on-site emergency plans<sup>29</sup>; and
- 1337 (B) co-operate with those other establishments to enable them to carry out any obligations they have to supply information to the local authority necessary for enabling it to prepare an off-site emergency plan<sup>30</sup> or to provide information to the public<sup>31</sup> as described above<sup>32</sup>.

1 As to the meaning of 'operator' see PARA 663 note 1.

2 As to the meaning of 'establishment' see PARA 846 note 3.

3 As to the meaning of 'notify' see PARA 663 note 16.

4 As to the meaning of 'competent authority' see PARA 663 note 15.

5 As to the meaning of 'major accident' see PARA 663 note 2.

6 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(1), (2) (reg 14(1) substituted by SI 2005/1088).

7 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(3). The information referred to is that specified in Sch 6. The information referred to in reg 14(3) is as follows: (1) name of operator and address of the establishment; (2) identification, by position held, of the person giving the information; (3) confirmation that the establishment is subject to the 1999 regulations and that the notification referred to in reg 6 (see PARA 663) or the safety report (see PARA 664) has been submitted to the competent authority; (4) an explanation in simple terms of the activity or activities undertaken at the establishment; (5) the common names or, in the case of dangerous substances covered by Sch 1 Pt 3 (see PARA 662), the generic names or the general danger classification of the substances and preparations involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics; (6) general information relating to the nature of the major accident hazards, including their potential effects on the population and the environment; (7) adequate information on how the population concerned will be warned and kept informed in the event of a major accident; (8) adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident; (9) confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects; (10) a reference to the off-site emergency plan for the establishment (see PARA 665); this should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident; (11) details of where further relevant information can be obtained, unless making that information available would be contrary to the interests of national security or personal confidentiality or would prejudice to an unreasonable degree the commercial interests of any person: Sch 6 paras 1-11.

8 For the purposes of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14 only, 'local authority' means, in relation to (1) the City of London, the Common Council for the City of London; (2) an area in the rest of London, the London Borough Council for that area; (3) the isles of Scilly, the Council of the Isles of Scilly; (4) an area in the rest of England, the district council for that area or where there is no district council for that area, the county council for that area; (5) an area in Scotland, the council for the local government area, and (6) an area in Wales, the county council or the county borough council for that area: reg 2(1). As to the meaning of 'local authority' for other purposes of the 1999 regulations see PARA 665 note 16.

9 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(4).

10 'Off-site emergency plan' is to be construed in accordance with the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(1) (see PARA 665): reg 2(1).

11 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(7). The revision referred to in the text is revision under reg 14(6): see the text and notes 14-16.

12 *Ie* without prejudice to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(1).

13 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(5).

14 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(6)(a).

15 *Ie* a modification referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(4): see PARA 663.

16 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(6)(b). The modification referred to in head (b) in the text is a modification referred to in reg 8(4): see PARA 664.

17 *Ie* to comply with the Control of Major Accident Hazards Regulations 1999, SI 1999/743: see PARA 662 et seq; the text and notes 1-16, 18-32; and PARA 667.

18 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 15(1). Anything required to be sent by an operator of an establishment to the competent authority pursuant to the 1999 regulations must be sent to the authority at an office of the Health and Safety Executive: reg 15(5). As to the Health and Safety Executive see PARA 361 et seq.

19 *Ie* without prejudice to the generality of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 15(1): reg 15(2).

20 *Ie* its functions under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 19(4): see PARA 667.

21 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 15(2).

22 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 15(3). Where the operator has notified a major accident to the Executive in accordance with the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (see PARA 399 et seq), he is to be deemed to have complied with the requirement to inform the competent authority of that accident under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 15(3): reg 15(4).

23 *Ie* sent to it pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 6: see PARA 663.

24 As to the meaning of 'safety report' see PARA 663 note 29.

25 As to the meaning of 'dangerous substance' see PARA 662 note 4.

26 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 16(1). As to the presence of dangerous substances see PARA 662 note 5.

27 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 16(2).

28 'Major accident prevention policy document' is to be construed in accordance with the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 5(1) (see PARA 663): reg 2(1).

29 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 16(3)(a). 'On-site emergency plan' is to be construed in accordance with reg 9(1) (see PARA 665): reg 2(1).

30     le under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 10(3), (5): see PARA 665.

31     le under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14(1): see heads (1)-(2) in the text.

32     Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 16(3).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(3) MAJOR ACCIDENT HAZARDS AND RADIATION EMERGENCIES/(i) Major Accident Hazards/667. Functions of competent authority.

#### **667. Functions of competent authority.**

The competent authority<sup>1</sup> must within a reasonable period of time of receiving a safety report<sup>2</sup>:

- 1338 (1) communicate the conclusions of its examination of the report to the operator<sup>3</sup> of the establishment<sup>4</sup> concerned; or
- 1339 (2) prohibit the operation or bringing into operation of the establishment or installation<sup>5</sup> concerned or any part of it in accordance with the provisions set out below<sup>6</sup>.

The competent authority must prohibit the operation or bringing into operation of any establishment or installation or any part of it where the measures taken by the operator for the prevention and mitigation of major accidents<sup>7</sup> are seriously deficient<sup>8</sup>; and may prohibit the operation or bringing into operation of any establishment or installation or any part of it if the operator has failed to submit any notification, safety report or other information required by or under the relevant regulations<sup>9</sup> within the time so required<sup>10</sup>. Where the competent authority proposes to prohibit an operation or the bringing into operation of an establishment or installation or any part of it pursuant to this provision, it must serve on the operator a notice giving reasons for the prohibition and specifying the date when it is to take effect<sup>11</sup>. A notice so served may specify measures which, if taken, would cause the competent authority to withdraw the notice<sup>12</sup>. Where a notice has been so served on an operator, the operator must comply with it, including any such notice as modified on appeal<sup>13</sup>.

Any such notice may be withdrawn in writing by the competent authority<sup>14</sup>.

The competent authority must organise an adequate system of inspections of establishments or other measures of control appropriate to the type of establishment concerned<sup>15</sup>. Those inspections or control measures are not to be dependent upon the receipt of any report submitted by the operator and they must be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organisational or managerial nature, so as to ensure in particular:

- 1340 (a) that the operator can demonstrate that he has taken appropriate measures to prevent major accidents;
- 1341 (b) that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents both inside and outside the establishment;
- 1342 (c) that the information contained in any report sent to the competent authority by the operator of the establishment adequately reflects the conditions in the establishment; and
- 1343 (d) that information has been supplied<sup>16</sup> to the public<sup>17</sup>.

Such a system of inspection must meet the following conditions:

- 1344 (i) there must be a programme of inspections for all establishments;
- 1345 (ii) unless such a programme is based upon a systematic appraisal of major accident hazards of the particular establishment concerned, the programme must,



- in the case of establishments to which the relevant provisions<sup>18</sup> apply, entail at least one on-site inspection made on behalf of the competent authority every 12 months;
- 1346 (iii) following each inspection, a report must be prepared by the competent authority; and
- 1347 (iv) where necessary, matters must be pursued with the operator within a reasonable period following the inspection<sup>19</sup>.

Where the competent authority or the Health and Safety Executive<sup>20</sup> has been informed of a major accident at an establishment the competent authority must:

- 1348 (A) obtain from the operator of the establishment information as respects the circumstances of the accident, the dangerous substances<sup>21</sup> involved, the data available for assessing the effects of the accident on persons and the environment, the emergency measures taken and the steps envisaged to alleviate the medium and long-term effects of the accident and to prevent any recurrence of it, and such other information in the operator's possession as will enable the competent authority to notify the European Commission<sup>22</sup>;
- 1349 (B) ensure that any urgent, medium and long-term measures which may prove necessary are taken;
- 1350 (C) make a full analysis of the technical, organisational and managerial aspects of the major accident and collect, by inspection, investigation or other appropriate means, the information necessary for that purpose;
- 1351 (D) take appropriate action to ensure that the operator takes any necessary remedial measures; and
- 1352 (E) make recommendations on future preventive measures<sup>23</sup>.

The competent authority must notify the European Commission as soon as practicable of any major accident meeting the specified criteria<sup>24</sup> and of any analysis and recommendations made pursuant to heads (C) and (E) above<sup>25</sup>.

The competent authority must maintain a register containing the specified information<sup>26</sup>.

Provision is made for the enforcement of the relevant regulations<sup>27</sup> and for the payment of fees by operators of establishments to which they apply<sup>28</sup>.

1 As to the meaning of 'competent authority' see PARA 663 note 15.

2 As to the meaning of 'safety report' see PARA 663 note 29.

3 As to the meaning of 'operator' see PARA 663 note 1.

4 As to the meaning of 'establishment' see PARA 662 note 3.

5 As to the meaning of 'installation' see PARA 663 note 1.

6 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 17(1). Where a report has been sent to the competent authority in parts pursuant to reg 7(10) (see PARA 664), heads (1) and (2) in the text apply (1) to each part of the report, as if the reference to communicating the conclusions of the examination were a reference to communicating provisional conclusions; (2) to all parts of the report, as if the reference to communicating the conclusions of the examination within a reasonable period of time of receiving a safety report were a reference to communicating, within a reasonable period of time of receiving the last part, the examination of the parts as a whole having regard, in particular, to the inter-relationship between different industrial activities in the establishment: reg 17(2).

7 As to the meaning of 'major accident' see PARA 663 note 2.

8 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(1).

- 9 le by or under the Control of Major Accident Hazards Regulations 1999, SI 1999/743: see PARA 662 et seq.
- 10 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(2).
- 11 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(3). The Environment and Safety Information Act 1988 applies to a notice served under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(3) as it applies to a notice served under the Health and Safety at Work etc Act 1974 s 22 or s 21 in respect of a contravention of the 1999 regulations, as if the reference in the Environment and Safety Information Act 1988, Schedule, col 3 to an enforcing authority as defined in the Health and Safety at Work etc Act 1974 s 18(7)(a) were a reference to the competent authority: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 8 para 19.
- 12 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(4).
- 13 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(5). The Health and Safety at Work etc Act 1974 s 24 (appeal against improvement or prohibition notice: see PARA 379) and, in England and Wales, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, regs 1(1)(d), 16(3)(b), Sch 4 apply in relation to a notice so served as they apply in relation to a prohibition notice served under the Health and Safety at Work etc Act 1974 s 22 (see PARAS 378-379): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(6); Interpretation Act 1978 s 17(2).
- 14 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 18(3).
- 15 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 19(1).
- 16 le pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 14: see PARA 666.
- 17 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 19(2).
- 18 le the Control of Major Accident Hazards Regulations 1999, SI 1999/743, regs 7-14: see PARAS 664-666.
- 19 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 19(3).
- 20 As to the Health and Safety Executive see PARA 361 et seq.
- 21 As to the meaning of 'dangerous substance' see PARA 662 note 4.
- 22 le pursuant to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 21(1): see the text and notes 24-25. As to the meaning of 'notify' see PARA 663 note 16.
- 23 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 19(4).
- 24 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 21(1). The criteria referred to in the text are those specified in Sch 7 Pt 1. The criteria referred to in reg 21(1) are as follows:
  - 300 (1) any accident covered in head (a) below or having at least one of the consequences described in heads (b), (c), (d) and (e) below must be notified to the Executive:
  17. (a) substances involved: any fire or explosion or accidental discharge of a dangerous substance involving a quantity of at least 5% of the qualifying quantity laid down in Sch 1 Pts 2, 3, col 3 (see PARA 662);  
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  18. (b) injury to persons and damage to property: an accident directly involving a dangerous substance and giving rise to one of the following events: (i) a death, (ii) six persons injured within the establishment and kept in hospital for at least 24 hours, (iii) one person outside the establishment kept in hospital for at least 24 hours, (iv) dwellings outside the establishment damaged and unusable as a result of the accident, (v) the evacuation or confinement of persons for more than two hours (person x hours): the value is at least 500, (vi) the interruption of drinking water, electricity, gas or telephone services for more than two hours (person x hours): the value is at least 1,000;  
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  19. (c) immediate damage to the environment: (i) permanent or long-term damage to terrestrial habitats: 0.5 ha or more of a habitat of environmental or conservation importance protected by legislation, 10 ha or more of more widespread habitat, including agricultural land; (ii) significant or long-term damage to freshwater and marine habitats: 10 km or more of river or canal, 1 ha or more of a lake

or pond, 2 ha or more of delta, 2 ha or more of a coastline or open sea; (iii) significant damage to an aquifer or underground water: 1 ha or more;  
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20. (d) damage to property: (i) damage to property in the establishment of at least 2 million ecus, (ii) damage to property outside the establishment of at least 0.5 million ecus;  
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21. (e) cross-border damage: any accident directly involving a dangerous substance giving rise to effects outside the territory of the member state concerned;  
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- 301 (2) accidents or 'near misses' which member states regard as being of particular technical interest for preventing major accidents and limiting their consequences and which do not meet the quantitative criteria above should be notified to the Executive.

25 Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 21(3). The notification must contain the information specified in Sch 7 Pt 2: reg 21(2). The information referred to in reg 21(2) is as follows: (1) the member state and the name and address of the competent authority; (2) the date, time and place of the major accident, including the full name of the operator and the address of the establishment involved; (3) a brief description of the circumstances of the accident, including the dangerous substances involved, and the immediate effects on persons and the environment; (4) a brief description of the emergency measures taken and of the immediate precautions necessary to prevent a recurrence: Sch 7 Pt 2. Regulation 21 applies notwithstanding the provisions of the Health and Safety at Work etc Act 1974 s 28 (restrictions on disclosure of information: see PARA 382): Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 21(5).

26 See the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 21(4), Sch 8. The competent authority must maintain a register containing the information comprised in (1) notifications to the competent authority under reg 6 (see PARA 663); (2) safety reports (see PARA 664); (3) notifications under reg 8(2) (see PARA 664 note 43); (4) notifications under reg 16(2) (see PARA 666); (5) communications under reg 17(1)(a) (see head (1) in the text); and such a register is in Sch 8 referred to as the 'register': Sch 8 para 1 (amended by SI 2005/1088). The competent authority may remove from the register information relating to an establishment (a) after the expiration of five years from the time the establishment ceases to be subject to the 1999 regulations; or (b) if it is of the opinion that for the past five years the information has not related to current major accident hazards at the establishment: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 8 para 2. Where information of any description is excluded from the register by virtue of Sch 8 paras 10-18, a statement must be entered in the register indicating the existence of information of that description: Sch 8 para 3. It is the duty of the competent authority to secure that the register is available, at all reasonable times, for inspection by the public free of charge and to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges: Sch 8 para 4. The register may be kept in any form: Sch 8 para 5.

No information may be included in the register if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security: Sch 8 para 6. The Secretary of State may, for the purpose of securing the exclusion from the register of information to which Sch 8 para 6 applies, give to the competent authority directions (i) specifying information, or descriptions of information, to be excluded from the register; or (ii) specifying descriptions of information to be referred to the Secretary of State for his determination; and no information referred to the Secretary of State in pursuance of head (ii) may be included in the register until the Secretary of State determines that it should be so included: Sch 8 para 7. The competent authority must notify the Secretary of State of any information it excludes from the register in pursuance of such directions: Sch 8 para 8. A person may, as respects any information which appears to him to be information to which Sch 8 para 6 may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so (A) he must notify the competent authority that he has done so; and (B) no information so notified to the Secretary of State may be included in any such register until the Secretary of State has determined that it should be so included: Sch 8 para 9.

No information relating to the affairs of any individual or business may be included in the register without the consent of that individual or the person for the time being carrying on that business, if and so long as the information is, in relation to him, commercially or personally confidential, and is not required to be included in the register in pursuance of directions under Sch 8 para 15; but information is not commercially or personally confidential for these purposes unless it is determined under Sch 8 to be so by the competent authority or, on appeal, by the Secretary of State: Sch 8 para 10.

Where information is provided to the competent authority pursuant to a requirement imposed by or under the 1999 regulations then, if the person providing it applies to the competent authority to have the information excluded from the register on the ground that it is commercially or personally confidential (as regards himself or another person), the competent authority must determine whether the information is or is not commercially or personally confidential: Sch 8 para 11. Such a determination must be made within the period of 28 days beginning with the date of the application and if the competent authority fails to make a determination within

that period it is to be treated as having determined that the information is commercially or personally confidential: Sch 8 para 12. Where, under Sch 8 para 11, the competent authority determines that information is not commercially or personally confidential: (aa) the information may not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned; (bb) that person may appeal to the Secretary of State against the decision; and, where an appeal is brought in respect of any information, the information may not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn: Sch 8 para 13. Where information in a safety report is excluded from the register, the operator must within three months after being notified of its exclusion, or such longer period as the competent authority may allow, send to the competent authority a safety report which omits that information: Sch 8 para 13A (added by SI 2005/1088). The Environmental Protection Act 1990 s 15(5), (10) (prospectively repealed) as applied by s 22(6) (prospectively repealed) and regulations made under s 15(10) (prospectively repealed) as so applied have effect in relation to such an appeal as they have effect in relation to an appeal under s 22 (prospectively repealed) but as if any reference to an enforcing authority were a reference to the competent authority: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 8 para 14. See now the Pollution Prevention and Control Act 1999; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 186 et seq.

The Secretary of State may give to the competent authority directions as to specified information, or descriptions of information, which the public interest requires to be included in the register: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 8 para 15. Information excluded from the register is to be treated as ceasing to be commercially confidential for these purposes at the expiry of the period of five years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the competent authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the competent authority must determine whether or not that is the case: Sch 8 para 16. Schedule 8 paras 12, 14 apply in relation to such a determination as they apply in relation to a determination under Sch 8 para 11: Sch 8 para 17. Information is, for the purposes of any determination under Sch 8, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person: Sch 8 para 18. Any information other than that referred to in Sch 8 para 1 and which has been received by the competent authority pursuant to a requirement imposed by or under the 1999 regulations is, to the extent that it is not information relating to the environment for the purposes of the Environmental Information Regulations 1992, SI 1992/ SI 1992/3240, to be treated as being so for those purposes: Control of Major Accident Hazards Regulations 1999, SI 1999/743, Sch 8 para 20.

27 See the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20. The Health and Safety at Work etc Act 1974 ss 16-21 (approval of codes of practice and enforcement: see PARAS 372 et seq, 426); s 23 (provisions supplementary to ss 21 and 22) and s 24 (appeal against improvement or prohibition notice: see PARA 379), so far as they relate to an improvement notice; s 26 (power to indemnify inspectors: see PARA 375); and ss 33-42 (provisions as to offences: see PARA 852 et seq), apply, subject to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(2), (3), and to the extent they would not otherwise do so, to the 1999 regulations as if they were health and safety regulations for the purposes of that Act, and any function of the Health and Safety Executive under any other provision of the 1974 Act under or in respect of health and safety regulations (including their enforcement) is exercisable as if the 1999 regulations were, to the extent they would not otherwise be so, health and safety regulations for the purposes of that Act: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(1) (amended by SI 2008/960). A failure to discharge a duty placed on the competent authority by the 1999 regulations is not to be an offence, and the Health and Safety at Work etc Act 1974 s 33(1)(c) (see PARA 852) has effect accordingly; and s 18(1) (duty to make adequate arrangements for enforcement: see PARA 370) applies in relation to the enforcement of those regulations as if the reference to the Executive included a reference to the Environment Agency, but nothing in this provision has the effect of making the Agency an enforcing authority for the purposes of the 1974 Act: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(2), (3).

Without prejudice to the provisions of the 1974 Act referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(1), the Environment Act 1995 s 108(1) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 148) has effect in relation to a person authorised by the Agency as if the reference in that section to a pollution control enactment included a reference to the 1999 regulations and as if the reference to a pollution control function included a reference to any function conferred or imposed on the Agency by or under those regulations: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(4). Without prejudice to the functions of an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see PARA 375), a person referred to in the previous provision may, notwithstanding that he is not an inspector so appointed, serve an improvement notice under s 21 in respect of a contravention of the 1999 regulations, and the reference to an inspector in the Health and Safety at Work etc Act 1974 s 23(4) (see PARA 377) has effect accordingly: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(5). Notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see PARAS 370, 372) the Executive is, for the purposes of the 1974 Act, the enforcing authority for the relevant statutory provisions at an establishment to which any of the 1999 regulations apply, unless a transfer of responsibility is made: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(6) (substituted by SI 2008/2337). The responsibility, for the purposes of the 1974 Act, for enforcing any of the relevant statutory provisions at any establishment to which any of the 1999 regulations apply may be transferred from the

Executive to the local authority, in so far as the main activity carried on at that establishment is the sale of goods, or the storage of goods for retail or wholesale distribution, except (1) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway; (2) where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply; or (3) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(7) (reg 20(7)-(9) added by SI 2008/2337). A transfer may be made only by agreement between the Executive and the local authority: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20(8) (as so added). Where a transfer has been made, the local authority must cause notice of the transfer to be given to persons affected by it: reg 20(9) (as so added). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

28 See the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22. A fee is payable by the operator of an establishment to the Executive for the performance by or on behalf of the competent authority of any function conferred on the authority by the 1999 regulations (except reg 10(2), (6) and (7): see PARA 665): reg 22(1). A fee is payable by the operator of an establishment to the Executive for the performance (1) by or on behalf of the Executive or the Agency of any function relating to the enforcement of those regulations conferred on the Executive or Agency by the Health and Safety at Work etc Act 1974 or by virtue of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 20 (see note 27); and (2) by an inspector or authorised person of any such function conferred on him by the 1974 Act or by virtue of that regulation: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(2). Subject to reg 22(2B), a fee is payable to the Executive by an operator of an establishment who is required to prepare a safety report pursuant to reg 7 (see PARA 664) for the performance by or on behalf of the Executive, or by an inspector appointed by it, of any function conferred on the Executive or the inspector by the 1974 Act which relates to the enforcement of any of the relevant statutory provisions against one or more than one of the following: (a) that operator or owner in relation to the establishment to which the current safety report relates; or (b) a contractor in relation to any work carried out by him on or in connection with that establishment: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(2A) (added by SI 2008/736; and amended by SI 2008/1087). The Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(2A) does not apply in the case of an establishment where the presence of the dangerous substance at the establishment is, in the opinion of the Executive, for a purpose ancillary to the main activity at the establishment: reg 22(2B) (added by SI 2008/736). The fee referred to in the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(1), (2), (2A) may not exceed the sum of the costs reasonably incurred by the competent authority, the Executive or the Agency, as the case may be, for the performance of the functions in relation to the establishment concerned and is payable within 30 days from the date of the invoice that the Executive has sent or given to the operator (such invoice to include a statement of the work done and the cost incurred including the period to which the statement relates): reg 22(3) (amended by SI 2008/736). The Executive must pay to the Agency any such fee or part of any such fee it recovers as is attributable to work done by or on behalf of the Agency or by an authorised person in performing the functions concerned: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(4). For these purposes, any reference to work carried out by a contractor is a reference to work carried out by the contractor or his employees for the benefit of the person by whom the fees are payable under this regulation, whether pursuant to an agreement or an arrangement he has made with that person or with another person: reg 22(8) (added by SI 2008/736). Note that, in so far as amendments made to the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22 by the Health and Safety (Fees) Regulations 2008, SI 2008/736, were revoked by the Health and Safety (Fees) Regulations 2009, SI 2009/515, those amendments (as amended by the Control of Major Accident Hazards (Amendment) Regulations 2008, SI 2008/736) are revived: see the Control of Major Accident Hazards (Amendment) Regulations 2009, SI 2009/1595.

Any fee payable under the Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22 is recoverable only as a civil debt: reg 22(5). Any fee so payable does not include costs connected with, in England and Wales, any criminal investigation or prosecution incurred (in either case) from the date any summons is obtained from a magistrates' court and any appeal pursuant to the Health and Safety at Work etc Act 1974 s 24 incurred from the date that a notice of appeal has been received by the Secretary of Tribunals pursuant to, in England and Wales, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(6)(a), (c); Interpretation Act 1978 s 17(2). For these purposes, 'inspector' means a person appointed by the Executive under the Health and Safety at Work etc Act 1974 s 19 and 'authorised person' means a person authorised by the Agency under the Environment Act 1995 s 108: Control of Major Accident Hazards Regulations 1999, SI 1999/743, reg 22(7). See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

## **UPDATE**

### **667 Functions of competent authority**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/6. PROVISIONS RELATING TO GENERAL RISKS/(3) MAJOR ACCIDENT HAZARDS AND RADIATION EMERGENCIES/ (ii) Radiation Emergencies/668. Hazard identification and risk evaluation.

## **(ii) Radiation Emergencies**

### **668. Hazard identification and risk evaluation.**

In relation to work with ionising radiation<sup>1</sup> to which the Radiation (Emergency Preparedness and Public Information) Regulations 2001<sup>2</sup> apply<sup>3</sup>:

- 1353 (1) every operator<sup>4</sup> must, before such work is for the first time carried out at the premises<sup>5</sup>, make an assessment; and
- 1354 (2) every carrier<sup>6</sup> must before he for the first time undertakes the transport<sup>7</sup> of any radioactive substance, make or ensure that there has been made an assessment,

which, in either case, is sufficient to demonstrate that all hazards arising from that work with the potential to cause a radiation accident<sup>8</sup> have been identified and that the nature and magnitude of the risks to employees<sup>9</sup> and other persons arising from those hazards have been evaluated<sup>10</sup>.

Where a material change occurs in the work with ionising radiation to which an assessment so made relates, the operator must make a further assessment to take account of that change and the carrier must make or ensure that there has been made a further assessment to take account of that change<sup>11</sup>.

For such time as the work with ionising radiation in respect of which an assessment so made continues, the operator and carrier must, within three years of the date of the last assessment<sup>12</sup> either make (or, in relation to a carrier, ensure that there has been made) a further assessment or, if there is no change of circumstances which would affect the last report of the assessment required<sup>13</sup>, sign a declaration to that effect<sup>14</sup>.

Where the assessment made for the above purposes shows that a radiation risk to employees or other persons exists from an identifiable radiation accident, the operator or carrier, as the case may be, must take all reasonably practicable<sup>15</sup> steps to prevent any such accident and to limit the consequences of any such accident which does occur<sup>16</sup>.

Where an initial assessment has been made<sup>17</sup> by an operator or carrier:

- 1355 (a) the operator in question must send to the Health and Safety Executive<sup>18</sup> a report of that assessment at least 12 months before the commencement of the work with ionising radiation to which the assessment relates or within such shorter time in advance as the Executive may agree; and
- 1356 (b) the carrier in question must send to the Executive a report of that assessment at least 28 days before the commencement of the work with ionising radiation to which the assessment relates or within such shorter time in advance as the Executive may agree<sup>19</sup>.

Where a further assessment has been made to take account of a material change in the relevant work<sup>20</sup>, the operator or carrier in question must send to the Executive a report of that

assessment within 28 days of the making of the material change or such longer time as the Executive may agree<sup>21</sup>.

Where a further assessment or declaration has been made<sup>22</sup>, the operator or carrier in question must send to the Executive a report of that assessment or the declaration, as the case may be, within 28 days of the assessment or declaration being made<sup>23</sup>.

A report of an assessment made for these purposes must include the specified particulars<sup>24</sup>. Where, for the purpose of assessing the risk to health or safety of persons who could be affected by work with ionising radiation to which the requirement to make an initial assessment<sup>25</sup> applies, the Executive may reasonably require a detailed assessment of any of the specified further particulars<sup>26</sup>, it may, by notice in writing served on the operator or carrier, require him to carry out (or, in relation to a carrier, require him to ensure that there has been carried out) such detailed assessment of such matters as are specified in the notice<sup>27</sup>. The operator or carrier, as the case may be, must send a report of that assessment to the Executive within such time as is specified in the notice or within such longer time as the Executive may subsequently allow<sup>28</sup>.

1 For these purposes, 'work with ionising radiation' means work involving the production, processing, handling, use, holding, storage or disposal of radioactive substances which can increase the exposure of persons to radiation from an artificial source, or from a radioactive substance containing naturally occurring radionuclides which are processed for their radioactive, fissile or fertile properties; 'ionising radiation' means the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometres or less or a frequency of  $3 \times 10^{15}$  hertz or more capable of producing ions directly or indirectly; and 'radioactive substance' means any substance which contains one or more radionuclides whose activity cannot be disregarded for the purposes of radiation protection: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1) (amended by SI 2007/1573).

2 In the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975: see the text and notes 3-28; and PARA 669 et seq. See also the Public Information for Radiation Emergencies Regulations 1992, SI 1992/2997 (largely revoked); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1474.

3 Subject to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 3(4) and with the exception of reg 17 (see PARA 673), the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975 (the '2001 regulations') apply to any work with ionising radiation which involves (1) having on any premises or providing facilities for there to be on any premises a radioactive substance containing more than the quantity of any radionuclide specified in Sch 2 or, in the case of fissile material, more than the mass of that material specified in Sch 3; or (2) transferring or conveying a radioactive substance containing more than the quantity of radionuclides specified in Sch 4 or, in the case of fissile material, more than the mass of that material specified in Sch 3 through any public place otherwise than by rail, road, inland waterway, sea or air or by means of a pipeline or similar means: reg 3(1) (amended by SI 2002/2099 and SI 2007/1573). The Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Schs 2-4 are not set out in detail in this work. For the purposes of head (1) above, a quantity specified in Sch 2 is to be treated as being exceeded if (a) where only one radionuclide is involved, the quantity of that radionuclide exceeds the quantity specified in the appropriate entry in Sch 2 Pt I; or (b) where more than one radionuclide is involved, the quantity ratio calculated in accordance with Sch 2 Pt II exceeds one: reg 3(2). For the purposes of head (2) above, a quantity specified in Sch 4 is to be treated as being exceeded if (i) where only one radionuclide is involved, the quantity of that radionuclide exceeds the quantity specified in the appropriate entry in Sch 4 Pt I; or (ii) where more than one radionuclide is involved, the quantity ratio calculated in accordance with Sch 4 Pt II exceeds one: reg 3(3) (amended by SI 2007/1573).

The 2001 regulations do not apply in respect of (A) except for the transport of such source, any non-dispersible source; (B) except for the transport of such substance, any radioactive substance which has an activity concentration of not more than  $100\text{Bqg}^{-1}$ ; (C) any radioactive substance conforming to the specifications for special form radioactive material set out in sub-section 2.7.2.3.3 of the UN Model Regulations (aa) which has received unilateral or multilateral approval pursuant to the law of any state implementing section 6.4.23 of the UN Model Regulations; or (bb) where the transport in question forms part of an international transport operation; (D) any radioactive substance contained in a package which complies in every respect as to its design with the requirements for (aa) a Type B(U) package, a Type B(M) package or a Type C package as set out in subsections 6.4.8, 6.4.9 or 6.4.10 of the UN Model Regulations respectively; or (bb) a consignment carried under special arrangement within the meaning of sections 1.5.4 and 6.4.23 of the UN Model Regulations which provides an equivalent level of safety as a type B(U) package, Type B(M) package or a Type C package complying with the requirements referred to in head (aa) above, and, in each case, the package has received unilateral or multilateral approval pursuant to the law of any state implementing section 6.4.23 of the UN Model



Regulations or the transport in question forms part of an international transport operation; (E) the transport of any radioactive substance in the form of a low specific activity material conforming to the specifications for LSA-I, LSA-II or LSA-III set out in 2.7.2.3.1 of the UN Model Regulations including cases where the transport forms part of an international transport operation; (F) the transport of any radioactive substance in the form of a surface contaminated object conforming to the specifications for SCO-I or SCO-II set out in sub-section 2.7.2.3.2 of the UN Model Regulations including cases where the transport forms part of an international transport operation; and (G) the presence of a radioactive substance while it is in or on the live body or corpse of a human being or animal where that presence occurs otherwise than in consequence of a radiation emergency: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 3(4) (amended by SI 2007/1573). In heads (C)-(F) above, 'UN Model Regulations' means the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, as revised or reissued from time to time (see **CARRIAGE AND CARRIERS**); and 'international transport operation' means the carriage of radioactive substances, including carriage by more than one mode of transport, where that carriage takes place in more than one country: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 3(6) (added by SI 2004/568; substituted by SI 2007/1573). The 2001 regulations do not apply in Northern Ireland: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 3(5). 'Non-dispersible source' means a sealed source or a radioactive substance which in either case by virtue of its physical and chemical form cannot cause a radiation emergency in any reasonably foreseeable event but it does not include any radioactive substance inside a nuclear reactor or any nuclear fuel element; and 'sealed source' means a source containing any radioactive substance whose structure is such as to prevent, under normal conditions of use, any dispersion of radioactive substances into the environment: reg 2(1). As to the meaning of 'premises' see note 5. For transitional provisions see reg 20.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt Her Majesty's Forces, visiting forces, any member of a visiting force working in or attached to any headquarters or organisation or any person engaged in work with ionising radiation for, or on behalf of, the Secretary of State for Defence, from all or any of the requirements or prohibitions imposed by the 2001 regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 18(2). For these purposes, any reference to 'visiting forces' is a reference to visiting forces within the meaning of any provision of the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140); and any reference to 'headquarters or organisation' is a reference to a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 18(1).

In so far as the 2001 regulations apply to, or in connection with, any activities in relation to which the Office of Rail Regulation is made the enforcing authority by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195) they have effect as if any reference to the Health and Safety Executive were a reference to the Office of Rail Regulation: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 18A(1) (reg 18A added by SI 2006/557). This does not apply, however, to the definition of 'the Executive' in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, 2(1) (interpretation), to reg 20 (transitional provisions) or to Sch 4 Pt 1 note 6 (specified quantities for the transport of radionuclides): reg 18A(2) (as so added).

4 For these purposes, any reference to an operator is a reference to (1) in relation to any premises other than a licensed site, the person who is, in the course of a trade, business or other undertaking carried on by him, in control of the operation of premises; and (2) in relation to a licensed site, the licensee, and any duty imposed by the 2001 regulations on the operator extends only in relation to those premises: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1), (3). 'Licensed site' means a site in respect of which a nuclear site licence has been granted and is in force; 'licensee' means the person to whom a nuclear site licence has been granted; and 'nuclear site licence' has the meaning assigned to it by the Nuclear Installations Act 1965 s 1(1) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1).

Unless the context otherwise requires, any reference to an employer includes a reference to a self-employed person and any duty imposed by the 2001 regulations on an employer in respect of his employee extends to a self-employed person in respect of himself: reg 2(4)(a).

5 'Premises' means (1) the whole area under the control of the same person where radioactive substances are present in one or more installations, and for this purpose two or more areas under the control of the same person and separated only by a road, railway or inland waterway are to be treated as one whole area; or (2) where radioactive substances are present on a licensed site, that licensed site; and, where a radioactive substance forms an integral part of a vessel and is used in connection with the operation of that vessel, it includes that vessel when it is at fixed point moorings or alongside berths, save that such vessel is to be deemed to be separate premises only where such moorings or berths do not form part of a licensed site or part of premises under the control of the Secretary of State for Defence: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1). 'Installation' means a unit in which the radioactive substances present are, or are intended to be, produced, used, handled or stored, and it includes (a)

equipment, structures, pipework, machinery and tools; (b) railway sidings, docks and unloading quays serving the unit; and (c) jetties, warehouses or similar structures, whether floating or not, which are necessary for the operation of the unit: reg 2(1).

6 For these purposes, any reference to a carrier is a reference to an employer transferring or conveying a radioactive substance through any public place otherwise than by rail, road, inland waterway, sea or air or by means of a pipeline or similar means: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1), (2) (reg 2(2) amended by SI 2007/1573).

7 'Transport' means transferring or conveying a radioactive substance through any public place otherwise than (1) by rail, road, inland waterway, sea or air; or (2) by means of a pipeline or similar means: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1) (amended by SI 2007/1573).

8 'Radiation accident' means an accident where immediate action would be required to prevent or reduce the exposure to ionising radiation of employees or any other persons and includes a radiation emergency; and 'radiation emergency' means any event (other than a pre-existing situation) which is likely to result in any member of the public being exposed to ionising radiation arising from that event in excess of any of the doses set out in Sch 1 and for this purpose any health protection measure to be taken during the 24 hours immediately following the event are to be disregarded: reg 2(1). The specified doses are (1) an effective dose of 5 mSv in the period of one year immediately following the radiation emergency; (2) without prejudice to head (1) above, (a) an equivalent dose for the lens of the eye of 15 mSv in the period of one year immediately following the radiation emergency; and (b) an equivalent dose for the skin of 50 mSv in the period of one year immediately following the radiation emergency over 1 cm<sup>2</sup> area of skin, regardless of the area exposed: Sch 1 paras 1, 2. For these purposes, any reference to an effective dose means the sum of the effective dose to the whole body from external radiation and the committed effective dose from internal radiation; any reference to equivalent dose to a human tissue or organ includes the committed equivalent dose to that tissue or organ from internal radiation; 'external radiation' means, in relation to a person, ionising radiation coming from outside the body of that person; and 'internal radiation' means, in relation to a person, ionising radiation coming from inside the body of that person: Sch 1 para 3.

Unless the context otherwise requires, any reference to exposure to ionising radiation is a reference to exposure to ionising radiation arising from work with ionising radiation: reg 2(1), (4)(b).

9 As to the meaning of 'employee' see PARA 302 note 4. As to self-employed persons see note 4.

10 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1). The requirements of reg 4 are without prejudice to the requirements of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (risk assessment: see PARA 429) and reg 7 (health and safety assistance etc: see PARA 436): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(3).

In performing the duties imposed on him by regs 4(1)(a), 4(2), 5, the operator must consult any other employer who carries out work with ionising radiation on the premises and must for the purpose of compliance with those duties take into account relevant matters arising from that consultation: reg 11(1). Any employer who carries out work with ionising radiation at premises to which the 2001 regulations apply must co-operate with the operator by providing information or otherwise to the extent necessary to ensure that the operator is enabled to comply with the requirements of those regulations (including the testing of emergency plans: see PARA 671) in so far as his ability depends on such co-operation: reg 11(2).

11 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 5(1).

12 Ie whether made in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1), reg 5(1) or reg 5(2).

13 Ie required by the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6: see the text and notes 19-28.

14 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 5(2).

15 As to what is reasonably practicable see PARA 417.

16 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(2).

17 Ie pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1).

18 As to the Health and Safety Executive see PARA 361 et seq.

19 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(1).

20 *le* pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 5(1).

21 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(2).

22 *le* pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 5(2).

23 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(3).

24 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(4). The specified particulars referred to in the text are those set out in Sch 5. The following particulars are required to be included in an assessment report under reg 6(4): (1) the name and address of the operator or carrier; (2) the postal address of the premises where the radioactive substance will be processed, manufactured, used or stored, or where the facilities for processing, manufacture, use or storage exist or, in the case of transport, the postal address of the transport undertaking; (3) the date on which it is anticipated that the work with ionising radiation will commence or, if it has already commenced, a statement to that effect; (4) a general description of the premises or place including the geographical location, meteorological, geological, hydrographic conditions and, where material, the history of the premises, except that in the case of transport a general description must be given of either (a) the starting and end points of the journey and transhipment points; or (b) the criteria to be used for route selection; (5) in the case of an assessment by an operator, a description of any radioactive substance on the premises which is likely to exceed any quantity or mass specified in Sch 2 or Sch 3, as the case may be, which description must where practicable include details of the radionuclides present and their likely maximum quantities; (6) in the case of an assessment by a carrier, a description of any radioactive substance which is likely to exceed any quantity or mass specified in Sch 4 or Sch 3, as the case may be, which description must where practicable include details of the radionuclides present and their likely maximum quantities; (7) except in the case of an assessment relating to transport, a plan of the premises in question and a map of the environs to a scale large enough to enable the premises and any features which could affect the general risk in an emergency to be identified; (8) a diagram and description of any single plant or enclosed system containing more than the quantity or mass of any radioactive substance specified in Sch 2 or Sch 3, as the case may be, or, in the case of the transport of more than the quantity or mass of any radioactive substance specified in Sch 4 or Sch 3, as the case may be, the nature of the containment for the radioactive substance; (9) those factors which could precipitate a major release of any radioactive substance and the measures to be taken to prevent or control such release and information showing the maximum quantity of radioactive substance which, in the event of a major failure of containment, would be released to the atmosphere including, in respect of premises, the identification of plant and other activities anywhere on the premises which could precipitate such release; (10) those factors which could precipitate a smaller but continuing release of any radioactive substance and the measures to be taken to prevent or control such releases to atmosphere; (11) those factors which could give rise to an incident involving the initiation of an unintended self-sustaining nuclear chain reaction or the loss of control of an intended self-sustaining nuclear chain reaction and, in either case, the measures to be taken to prevent or control any such incident; (12) information concerning the management systems and staffing arrangements by which the radioactive substance is controlled and by which the procedures are controlled; (13) except in the case of an assessment relating to transport, information about the size and distribution of the population in the vicinity of premises to which the report relates; (14) an assessment of the area which is likely to be affected by the dispersal of any radioactive substance as a result of any radiation emergency and the period of time over which such dispersal is likely to take place; (15) an assessment of the likely exposures to ionising radiation of any person or class of persons as a result of any radiation emergency; and (16) an assessment of the necessity for an emergency plan to be prepared by the operator or carrier: Sch 5 (amended by SI 2007/1573).

25 *le* the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1).

26 *le* the further particulars set out in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Sch 6: see note 27.

27 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(5). A further assessment and report may be required under reg 6(5) in respect of the following matters: (1) the analysis carried out to establish the likely consequences of any hazard, including the likely doses of ionising radiation to which members of the public might be exposed, and the probability of the occurrence of such hazard; (2) the number of persons whose health or safety might be affected by the hazard; (3) the management systems and staffing arrangements by which any hazard is to be or is controlled; (4) the safety systems, procedures and monitoring systems by which any hazard is to be or is controlled; (5) the qualifications, experience and training of staff concerned; (6) the design, construction, operation or maintenance of any equipment (including the incorporation of adequate safety or reliability features of such equipment) which is used for the purposes of intervention or which is used to control any hazard; (7) the design and operating

documentation; (8) the design and operation of containment and pressure systems; (9) the protection of persons from the effects of loss of containment; and (10) the procedures for the reporting of and learning from radiation emergencies: Sch 6.

28     Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(5).

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### **669. Operator's and carrier's emergency plans.**

Where the assessment made by an operator<sup>1</sup> shows that it is reasonably foreseeable that a radiation emergency<sup>2</sup> might arise<sup>3</sup>, the operator must prepare an adequate emergency plan (an 'operator's emergency plan') designed to secure, so far as is reasonably practicable<sup>4</sup>, the restriction of exposure to ionising radiation<sup>5</sup> and the health and safety of persons who may be affected by such reasonably foreseeable emergencies as are identified by that assessment<sup>6</sup>. The operator's emergency plan must<sup>7</sup> contain the specified information<sup>8</sup> and must be drawn up having regard to the specified principles<sup>9</sup>. Where appropriate it must secure intervention<sup>10</sup> for the prescribed purposes<sup>11</sup>.

No person may carry out work with ionising radiation<sup>12</sup> to which the initial assessment made<sup>13</sup> applies unless the operator has complied with the above requirements and the local authority<sup>14</sup> has complied with the prescribed requirements regarding the off-site emergency plan<sup>15</sup> and has provided confirmation<sup>16</sup> of this to the operator<sup>17</sup>.

For the purpose of preparing the operator's emergency plan or of reviewing the plan<sup>18</sup> the operator must consult:

- 1357 (1) his employees<sup>19</sup>, any person carrying out work on behalf of the operator, the Executive, the local authority in whose area the premises of the operator are situated, the emergency services<sup>20</sup>, the health authority<sup>21</sup> for the area in which the premises of the operator are situated and the Environment Agency<sup>22</sup>; and
- 1358 (2) such other persons, bodies and authorities as the operator considers appropriate,

and, in a case where the emergency services form part of the plan, must give such information to those services as will enable them to perform their functions in accordance with the plan<sup>23</sup>. The operator must ensure that any employee who may be involved with or may be affected by arrangements in the operator's emergency plan is or has been provided with:

- 1359 (a) suitable and sufficient information, instruction and training; and
- 1360 (b) the equipment necessary to restrict that employee's exposure to ionising radiation including, where appropriate, the issue of suitable dosimeters or other devices obtained in either case from the approved dosimetry service<sup>24</sup> with which the operator has entered into an arrangement<sup>25</sup>.

The operator must provide to the Executive upon request and within such reasonable time as the Executive may specify a copy of the operator's emergency plan or such parts of that plan as the Executive may require<sup>26</sup>.

Similarly, where the assessment made<sup>27</sup> shows that it is reasonably foreseeable that a radiation emergency might arise in respect of the transport<sup>28</sup> of a radioactive substance<sup>29</sup>, the carrier<sup>30</sup> must prepare or ensure that there has been prepared an adequate emergency plan in respect of the transport of such substances (a 'carrier's emergency plan') designed to secure, so far as is reasonably practicable, the restriction of exposure to ionising radiation and the health and safety of persons who may be affected by such reasonably foreseeable emergencies as are

identified by that assessment<sup>31</sup>. The carrier's emergency plan must contain the specified information<sup>32</sup> and must be drawn up having regard to the specified principles<sup>33</sup>. Where appropriate it must secure intervention for the prescribed purposes<sup>34</sup>.

A carrier must not undertake the transport of any radioactive substance to which the initial assessment made applies unless he has complied with the above requirements<sup>35</sup>.

For the purpose of preparing a carrier's emergency plan or of reviewing the plan, the carrier must ensure that consultation is carried out with the Executive and the Agency, and with such local authorities, emergency services, health authorities and other persons, bodies or authorities (or in each case representatives thereof) as the carrier considers appropriate<sup>36</sup>.

The carrier must ensure that any employee under his control who may be involved with or may be affected by arrangements in the carrier's emergency plan is or has been provided with suitable and sufficient information, instruction and training and the equipment necessary to restrict that employee's exposure to ionising radiation including, where appropriate, suitable dosimeters or other devices obtained in either case from the approved dosimetry service with which the carrier has entered into an arrangement<sup>37</sup>.

Where requested by the Executive, the carrier must provide to the Executive within such reasonable time as may be specified a copy of the carrier's emergency plan or such parts of the plan as the Executive may require<sup>38</sup>.

1    Ie made in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1) or reg 5: see PARA 668. As to the meaning of 'operator' see PARA 668 note 4.

2    As to the meaning of 'radiation emergency' see PARA 668 note 8.

3    Ie having regard to the steps taken by the operator under the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(2): see PARA 668.

4    As to what is reasonably practicable see PARA 417.

5    As to the meaning of 'ionising radiation' see PARA 668 note 1; and as to exposure to such radiation see PARA 668 note 8.

6    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(1). In performing the duties imposed on him by reg 7, the operator must consult any other employer who carries out work with ionising radiation on the premises and must for the purpose of compliance with those duties take into account relevant matters arising from that consultation: reg 11(1).

Any person who is subject to a duty under the 2001 regulations to prepare an emergency plan and any employer of any other person whose participation is reasonably required by any such plan must co-operate with each other by the exchange of information or otherwise to the extent necessary to ensure that each person is enabled to comply with the requirements of those regulations (including the testing of emergency plans: see PARA 671) in so far as his ability to comply depends upon such co-operation: reg 11(3).

7    Ie without prejudice to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(1).

8    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(2). The information referred to in the text is that specified in Sch 7 Pt I. That information is as follows: (1) the names or positions of persons authorised to set emergency procedures in motion and the person in charge of and co-ordinating the on-site mitigatory action; (2) the name or position of the person with responsibility for liaison with the local authority responsible for preparing the off-site emergency plan (see PARA 670); (3) for reasonably foreseeable conditions or events which could be significant in bringing about a radiation emergency, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available; (4) the arrangements for limiting the risks to persons on the premises including how warnings are to be given and the actions persons are expected to take on receipt of a warning; (5) the arrangements for providing early warning of the incident to the local authority responsible for setting the off-site emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available; (6) the arrangements for providing assistance with off-site mitigatory action; and (7) the arrangements for emergency exposures including the dose levels which have

been determined as appropriate for the purposes of putting into effect the emergency plan: Sch 7 Pt I. 'Emergency exposure' means an exposure of an employee engaged in an activity of or associated with the response to a radiation emergency or potential radiation emergency in order to bring help to endangered persons, prevent exposure of a large number of persons or save a valuable installation or goods, whereby one of the individual dose limits referred to in the Ionising Radiations Regulations 1999, SI 1999/3232, Sch 4 Pt I para 1 or Sch 4 Pt I para 2 (see PARA 648 notes 34-35) could be exceeded: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1).

Where an emergency plan prepared pursuant to the 2001 regulations provides for the possibility of any employee receiving an emergency exposure, each employer must in relation to his employees (a) identify those employees who may be subject to emergency exposures; (b) provide such employees with appropriate training in the field of radiation protection and such information and instruction as is suitable and sufficient for them to know the risks to health created by exposure to ionising radiation and the precautions which should be taken; (c) provide such equipment as is necessary to restrict the exposure of such employees to radiation; (d) make arrangements for medical surveillance by an appointed doctor or employment medical adviser to be carried out without delay in the event of a radiation emergency in respect of those employees who receive emergency exposures; (e) make arrangements with an approved dosimetry service for (i) dose assessments to be carried out without delay in the event of a radiation emergency in respect of those employees who receive emergency exposures, and a dose assessment made for this purpose must, where practicable, be made separately from any other dose assessment relating to those employees; and (ii) the results of the dose assessments carried out under head (i) above to be notified without delay to the employer and to the Executive; (f) make arrangements, in respect of dose assessments to be carried out and notified pursuant to head (e) above, to notify the results of such assessments without delay to the appointed doctor or employment medical adviser who is carrying out the medical surveillance on the employee to whom the assessment relates; (g) identify those employees who are to be authorised, in the event of a radiation emergency, to permit any employee referred to in head (a) above to be subject to an emergency exposure and provide employees who are so authorised with appropriate training: reg 14(1).

An operator must, at least 28 days before he for the first time commences work with ionising radiation, and a carrier must at least 28 days before he for the first time undertakes transport of any radioactive substance, or in either case within such shorter time in advance as the Executive may agree, notify to the Executive the dose levels which he has determined are appropriate to be applied in respect of an employee identified for the purposes of head (a) above in the event of such emergency: reg 14(2). Where an operator or carrier determines that a dose level so notified is no longer appropriate to be applied in respect of an employee identified for the purposes of head (a) above in the event of such emergency, and that a revised level should be determined, the operator or carrier, as the case may be, must, at least 28 days before formally determining the revised dose level, or within such shorter time in advance as the Executive may agree, notify to the Executive the revised dose level which he considers is appropriate to be applied: reg 14(3). In any case where in the opinion of the Executive the dose levels for emergency exposure notified pursuant to reg 14(2) or (3) are too high, the operator or carrier must, if so directed by the Executive, substitute such other dose level or levels as the Executive may consider is appropriate: reg 14(4). Where an emergency plan is put into effect pursuant to the provisions of reg 13 (see PARA 672), each employer must ensure: (A) that no employee of his under 18 years of age, no trainee under 18 years of age and no female employee who is pregnant or breastfeeding is subject to an emergency exposure; (B) that no other employee of his is subject to an emergency exposure unless (aa) that employee has agreed to undergo such exposure; (bb) the requirements of heads (a)-(f) above have been complied with in respect of that employee; and (cc) that employee has been permitted to be so by an employee authorised for that purpose under head (g) above; and (C) that no employee of his involved in implementing an emergency plan is exposed to a dose of radiation in excess of the dose level determined in accordance with reg 14(2), (3) or (4): reg 14(5). The requirement imposed on the employer by reg 14(5)(a) does not apply in respect of a female employee who is pregnant or breastfeeding until such time as the employee has notified the employer in writing of that fact or the employer should reasonably have been aware of that fact: reg 14(6). The requirement imposed by reg 14(5)(c) does not apply in respect of an exposure of any employee who (I) being informed about the risks involved in the intervention, agrees to undergo an exposure greater than any dose level referred to therein for the purpose of saving human life; and (II) is permitted to undergo such exposure by an employee authorised by the employer in accordance with head (g) above to give such permission: reg 14(7).

Where an employee has undergone an emergency exposure, the employer must ensure that the dose of ionising radiation received by that employee is assessed by an approved dosimetry service and that the dose assessed is recorded separately in the dose record of that employee or, where no dose record exists, in a record created for these purposes complying with the requirements to which it would be subject if it were a dose record: reg 14(8). An employer must at the request of an employee of his in respect of whom a record has been so created, and on reasonable notice being given, obtain from the approved dosimetry service and make available to the employee a copy of the record of dose relating to that employee: reg 14(9). In the event of a report made pursuant to reg 13(3) (see PARA 672) relating to the circumstances of an emergency exposure and the action taken as a result of that exposure, an employer must keep such report (or a copy thereof) until the person to whom the report relates has or would have attained the age of 75 years but in any event for at least 50 years from the termination of the work which involved any emergency exposure: reg 14(10).

'Dose assessment' means the dose assessment made and recorded by an approved dosimetry service in accordance with the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21; 'dose record' means the

record made and maintained in respect of an employee by the approved dosimetry service in accordance with reg 21; and 'medical surveillance' means medical surveillance carried out in accordance with reg 24 (see PARA 651): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1). As to the meaning of 'approved dosimetry service' see note 24.

The requirements of reg 14 do not have effect in relation to Her Majesty's Forces to the extent that compliance with those requirements would in the opinion of the Secretary of State for Defence be against the interests of national security: reg 18(3) (amended by SI 2002/2099).

9 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(4). The specified principles referred to are those set out in Sch 8 Pt I. An emergency plan drawn up pursuant to reg 7, reg 8 (see the text and notes 31-40) or reg 9 (see PARA 670) must, in so far as it applies to any radiation emergency, be drawn up having regard to the following principles: (1) the intervention must be undertaken only if the reduction in the detriment due to the radiation resulting from the radiation emergency is sufficient to justify the harm and costs, including the social costs, of the intervention; and (2) the form, scale and duration of the intervention must be carried out in such a way as to ensure that exposures to radiation are kept as low as is reasonably practicable so that the benefit of the reduction in health detriment less the detriment associated with the intervention will be maximised: Sch 8 Pt I. As to the meaning of 'intervention' see note 10.

10 'Intervention' means a human activity that prevents or decreases the exposure of persons to radiation from a radiation emergency or from an event which could lead to a radiation emergency, by acting on the sources of radiation, the paths by which such radiation may be transmitted to persons and on persons themselves: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1). In the event of a radiation emergency, the Ionising Radiations Regulations 1999, SI 1999/3232, reg 11 (dose limits: see PARA 648) does not apply to intervention: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 15.

11 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(5). The prescribed purposes are those set out in Sch 8 Pt II. The purposes of intervention referred to in reg 7(5), reg 8(6) (see the text and note 34) and reg 9(11) (see PARA 670) are (1) reducing or stopping at source direct radiation and the emission of radionuclides; (2) reducing the transfer of radioactive substances to individuals from the environment; and (3) reducing the exposure and organising the treatment of persons who have been subject to exposure to radiation: Sch 8 Pt II.

12 As to the meaning of 'work with ionising radiation' see PARA 668 note 1.

13 Ie made in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1): see PARA 668.

14 'Local authority' means, subject to heads (2)-(3) below: (1) in relation to (a) London, the London Fire and Emergency Planning Authority; (b) an area where there is a fire and civil defence authority, that authority; (c) the Isles of Scilly, the Council of the Isles of Scilly; (d) an area in the rest of England, the county council for that area or, where there is no county council for that area, the district council for that area; (e) an area in Scotland, the council for the local government area; and (f) an area in Wales, the county council or the county borough council for that area; (2) for the purposes of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(2) (see PARA 673), in relation to (a) London, the London Fire and Emergency Planning Authority, and, in the City of London, the Common Council for the City of London, or, in an area in the rest of London, the London Borough Council for that area; (b) any other area where there is a fire and civil defence authority, that authority and the district council for that area; (c) the Isles of Scilly, the Council of the Isles of Scilly; (d) an area in the rest of England, the county council, if any, for that area and the district council, if any, for that area; (e) an area in Scotland, the council for the local government area; and (f) an area in Wales, the county council or the county borough council for that area; (3) for the purposes of reg 16(3) (see PARA 673), in relation to (a) the City of London, the Common Council for the City of London; (b) an area in the rest of London, the London Borough Council for that area; (c) the Isles of Scilly, the Council of the Isle of Scilly; (d) an area in the rest of England, the district council for that area or, where there is no district council for that area, the county council for that area; (e) an area in Scotland, the council for the local government area; and (f) an area in Wales, the county council or the county borough council for that area: reg 2(1).

15 Ie the provisions of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(1), (2), (8) and (9): see PARA 670.

16 Ie in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(13): see PARA 670.

17 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(3).

18 Ie pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(1): see PARA 671.



- 19 As to the meaning of 'employee' see PARA 302 note 4.
- 20 'Emergency services' means (1) those police, fire and ambulance services who are likely to be required to respond to a radiation emergency which has occurred at the premises of an operator or at the location of a radiation emergency during the course of the transport of a radioactive substance; and (2) where appropriate, Her Majesty's Coastguard: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1).
- 21 'Health authority' means (1) in relation to England, a primary care trust established under the National Health Service Act 1977 s 16A; (2) in relation to Wales, a local health board: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1) (definition substituted by SI 2002/2469); References to Health Authorities Order 2007, SI 2007/961.
- 22 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 23 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(6).
- 24 'Approved dosimetry service' means an approved dosimetry service within the meaning of the Ionising Radiations Regulations 1999, SI 1999/3232, and which is approved for the purpose of reg 14 (see PARA 649): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1).
- 25 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(7). The arrangement referred to in the text is an arrangement under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21: see PARA 651.
- 26 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(8).
- 27 See note 1.
- 28 As to the meaning of 'transport' see PARA 668 note 7.
- 29 Ie having regard to the steps taken by the carrier under the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(2). As to the meaning of 'radioactive substance' see PARA 668 note 1.
- 30 As to the meaning of 'carrier' see PARA 668 note 6.
- 31 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(1).
- 32 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(2). The information referred to is that specified in Sch 7 Pt II. The information referred to in reg 8(2) is as follows: (1) the names or positions of persons authorised to set emergency procedures in motion and the person in charge of and co-ordinating the mitigatory action; (2) for reasonably foreseeable conditions or events which could be significant in bringing about a radiation emergency, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available; (3) the arrangements for providing early warning of the incident, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available; and (4) the arrangements for emergency exposures including the dose levels which have been determined as appropriate for the purposes of putting into effect the emergency plan: Sch 7 Pt II.
- 33 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(5). As to the specified principles see Sch 8 Pt I; and note 9.
- 34 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(6). As to the prescribed purposes see Sch 8 Pt II; and note 11.
- 35 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(3).
- 36 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(7) (amended by SI 2007/1573).
- 37 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(8). The arrangement referred to in the text is an arrangement under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 21: see PARA 651.
- 38 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 8(9).



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### **670. Off-site emergency plan.**

The local authority<sup>1</sup> in whose area there are situated premises<sup>2</sup> at which there is carried out work with ionising radiation<sup>3</sup> to which the relevant regulations<sup>4</sup> apply<sup>5</sup> and in respect of which an assessment made by the operator<sup>6</sup> shows that it is reasonably foreseeable<sup>7</sup> that a radiation emergency<sup>8</sup> might arise must prepare an adequate emergency plan (an 'off-site emergency plan') designed to secure, so far as is reasonably practicable<sup>9</sup>, the restriction of exposure to ionising radiation<sup>10</sup> and the health and safety of persons who may be affected by such reasonably foreseeable emergencies as are identified in that assessment<sup>11</sup>. The off-site emergency plan must<sup>12</sup> contain the specified information<sup>13</sup>.

The off-site emergency plan so prepared must address each reasonably foreseeable radiation emergency that has been identified<sup>14</sup> by the operator<sup>15</sup>.

Where an initial assessment has been made<sup>16</sup>, within 28 days of sending the report of the assessment to the Health and Safety Executive<sup>17</sup>, the operator must supply to the local authority such information as is necessary for the purpose of enabling the authority to prepare the required off-site emergency plan<sup>18</sup>. The operator must further supply to the local authority:

- 1361 (1) any additional information the local authority may reasonably request to enable the off-site emergency plan to be prepared; and
- 1362 (2) details of any material change to the information provided under the above provisions resulting from a further assessment made<sup>19</sup> or a revision<sup>20</sup> of the operator's emergency plan<sup>21</sup>.

The information provided to a local authority<sup>22</sup> must be reviewed and where necessary revised by the operator at suitable intervals not exceeding three years from the date at which information was last so supplied to the local authority and the operator must within 28 days inform the local authority of the outcome of that review<sup>23</sup>. The operator must, within 28 days of any further assessment or revision referred to in head (2) above, inform the local authority of any material change to the information supplied arising from that assessment or review<sup>24</sup>.

The off-site emergency plan must be prepared before the operator carries out work with ionising radiation to which the initial assessment made applies<sup>25</sup>. Subject to that, it must be prepared no later than six months (or such longer period as the Executive may agree in writing) after whichever is the later of:

- 1363 (a) the receipt by the local authority of a notice from the Executive informing the local authority of the need to prepare an off-site emergency plan in respect of the area; or
- 1364 (b) the receipt by the local authority of the necessary information<sup>26</sup>.

The off-site emergency plan must be drawn up having regard to the specified principles<sup>27</sup> and must secure, where appropriate, intervention<sup>28</sup> for the prescribed purposes<sup>29</sup>. For the purpose of preparing an off-site emergency plan or of reviewing the plan<sup>30</sup>, the local authority must consult:

- 1365 (i) the operator carrying out the work with ionising radiation to which the plan relates, the Executive, the emergency services<sup>31</sup>, each health authority<sup>32</sup> in the vicinity of the premises of the operator and the Environment Agency<sup>33</sup>; and  
 1366 (ii) such other persons, bodies and authorities and members of the public as the local authority considers appropriate<sup>34</sup>.

Once it has prepared the off-site emergency plan the local authority must confirm in writing to the operator that it has done so<sup>35</sup>.

The employer of any employee<sup>36</sup> who may be required to participate in the implementation of an off-site emergency plan must ensure that such employees of his are or have been provided with:

- 1367 (A) suitable and sufficient information, instruction and training; and  
 1368 (B) the equipment necessary to restrict that employee's exposure to ionising radiation including, where appropriate, the issue of suitable dosimeters or other devices<sup>37</sup>.

The local authority must provide to the Executive upon request and within such reasonable time as may be specified a copy of the off-site emergency plan or such parts of that plan as the Executive may require<sup>38</sup>.

A local authority may charge the operator a fee for performing the local authority's functions in relation to the off-site emergency plan<sup>39</sup>.

1 As to the meaning of 'local authority' see PARA 669 note 14.

2 As to the meaning of 'premises' see PARA 668 note 5.

3 As to the meaning of 'work with ionising radiation' see PARA 668 note 1.

4 I.e. the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975: see PARAS 668-669; the text and notes 5-39; and PARA 671 et seq.

5 As to the application of the 2001 regulations see PARA 668.

6 As to the meaning of 'operator' see PARA 668 note 4.

7 I.e. having regard to the steps taken by the operator under the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(2): see PARA 668.

8 As to the meaning of 'radiation emergency' see PARA 668 note 8.

9 As to what is reasonably practicable see PARA 417.

10 As to the meaning of 'ionising radiation' see PARA 668 note 1; and as to exposure to such radiation see PARA 668 note 8.

11 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(1). The plan must be prepared in respect of such area as in the opinion of the Health and Safety Executive any member of the public is likely to be affected by such radiation emergencies: reg 9(1). 'Member of the public' means any person not being (1) a person for the time being present upon premises where a radiation emergency is reasonably foreseeable or where a radiation emergency has actually occurred; or (2) a person engaged in an activity of or associated with the response to a radiation emergency: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2(1).

12 I.e. without prejudice to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(1).

13 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(2). The information referred to in the text is that specified in Sch 7 Pt III. The information referred to in reg 9(2) is

as follows: (1) the names or positions of persons authorised to set emergency procedures in motion and of persons authorised to take charge of and co-ordinate the off-site mitigatory action; (2) the arrangements for receiving early warning of incidents, and alert and call-out procedures; (3) the arrangements for co-ordinating resources necessary to implement the off-site emergency plan; (4) the arrangements for providing assistance with on-site mitigatory action; (5) the arrangements for off-site mitigatory action; (6) the arrangements for providing the public with specific information relating to the emergency and the behaviour which it should adopt; and (7) the arrangements for emergency exposures including the dose levels which have been determined as appropriate for the purposes of putting into effect the emergency plan: Sch 7 Pt III. As to the meaning of 'emergency exposure' see PARA 669 note 8.

14    le for the purposes of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7(1): see PARA 669.

15    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(3).

16    le pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1): see PARA 668.

17    le in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6(1): see PARA 668. As to the Health and Safety Executive see PARA 361 et seq.

18    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(4).

19    le pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 5(1) or (2): see PARA 668.

20    le pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(1): see PARA 671.

21    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(5).

22    le pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(4) or (5)(a).

23    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(6).

24    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(7).

25    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(9).

26    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(8).

27    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(10). The principles referred to in the text are those set out in Sch 8 Pt I: see PARA 669 note 9.

28    As to the meaning of 'intervention' see PARA 669 note 10.

29    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(11). The prescribed purposes are those set out in Sch 8 Pt II: see PARA 669 note 11.

30    See note 20.

31    As to the meaning of 'emergency services' see PARA 669 note 20.

32    As to the meaning of 'health authority' see PARA 669 note 21.

33    As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

34    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(12).

35    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(13).

36    As to self-employed persons see PARA 668 note 4. As to the meaning of 'employee' see PARA 302 note 4.

37    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(14).

38    Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9(15).

39 See the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 12(1)(a); and PARA 671.

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### **671. Review and testing of emergency plans.**

The operator<sup>1</sup>, carrier<sup>2</sup> or local authority<sup>3</sup> who has prepared (or, in relation to a carrier, has ensured that there has been prepared) an emergency plan<sup>4</sup> must at suitable intervals not exceeding three years:

- 1369 (1) review and where necessary revise the plan; and
- 1370 (2) test the plan and take reasonable steps to arrange for the emergency services<sup>5</sup> to participate in the test to such extent as is necessary<sup>6</sup>.

Any such review must take into account changes occurring in the work with ionising radiation<sup>7</sup> to which the plan relates and within the emergency services concerned, new technical knowledge and knowledge concerning the response to radiation emergencies<sup>8</sup> and any material change to the assessment on which the plan was based since it was last reviewed or revised<sup>9</sup>.

The local authority must endeavour to reach agreement with the operator who is subject to a duty to prepare an operator's emergency plan and the emergency services as to how the off-site emergency plan is to be tested<sup>10</sup>; and the carrier must endeavour to reach agreement with such local authorities and emergency services as are appropriate as to how the carrier's emergency plan is to be tested<sup>11</sup>.

A local authority may charge:

- 1371 (a) the operator a fee for performing the local authority's functions in relation to the off-site emergency plan<sup>12</sup>; and
- 1372 (b) the carrier a fee for performing the local authority's functions in relation to the carrier's emergency plan under head (2) above<sup>13</sup>.

1 As to the meaning of 'operator' see PARA 668 note 4.

2 As to the meaning of 'carrier' see PARA 668 note 6.

3 As to the meaning of 'local authority' see PARA 669 note 14.

4 I.e. pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7, reg 8 or reg 9, as the case may be: see PARAS 669-670.

5 As to the meaning of 'emergency services' see PARA 669 note 20.

6 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(1).

7 As to the meaning of 'work with ionising radiation' see PARA 668 note 1.

8 As to the meaning of 'radiation emergency' see PARA 668 note 8.

9 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(1).

10 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(2).

11 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 10(3).

12 le its functions under the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9 (see PARA 670) and reg 10.

13 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 12(1). The fee so charged may not exceed the sum of costs reasonably incurred by the local authority in performing the functions referred to in the text, including (but without prejudice to the generality of the foregoing provision) any costs reasonably incurred by the local authority in arranging for the emergency services to participate in the testing of the off-site emergency plan or the carrier's plan, as the case may be: reg 12(2). When requiring payment the local authority must send or give to the operator or carrier, as the case may be, a detailed statement of the work done and the costs incurred including the dates of any site visits and the period to which the statement relates and the fee, which is recoverable only as a civil debt, becomes payable one month after the statement has been sent or given: reg 12(3).



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## **672. Implementation of emergency plans.**

An operator<sup>1</sup> or carrier<sup>2</sup> who has prepared (or, in relation to a carrier, has ensured that there has been prepared) an emergency plan<sup>3</sup> must take reasonable steps to put it, or such parts of it as are necessary, into effect without delay when a radiation emergency<sup>4</sup> occurs, or an event occurs which could reasonably be expected to lead to a radiation emergency, and must notify such occurrence to the Health and Safety Executive<sup>5</sup> without delay<sup>6</sup>.

A local authority<sup>7</sup> which has prepared an emergency plan<sup>8</sup> must take reasonable steps to ensure that it, or such parts of it as are necessary, is or are put into effect without delay when informed by the operator that a radiation emergency has occurred or an event has occurred which could reasonably be expected to lead to a radiation emergency<sup>9</sup>.

In the event of a radiation emergency resulting from his work with ionising radiation<sup>10</sup>, the operator or carrier must:

- 1373 (1) as soon as is reasonably practicable<sup>11</sup>, make (or, in relation to a carrier, ensure that there has been made) a provisional assessment of the circumstances and consequences of such an emergency and for this purpose must consult:
- 165 267. (a) in the case of the operator, the emergency services<sup>12</sup>, the local authority, the health authority<sup>13</sup>, the Environment Agency<sup>14</sup> and such other persons, bodies or authorities as have functions under the operator's emergency plan or the off-site emergency plan; and
- 268. (b) in the case of the carrier, the Agency and any emergency services, local authority and health authority who were involved in the response to the emergency and such other persons, bodies or authorities as have functions under the carrier's emergency plan;
- 166 1374 (2) as soon as is practicable and in any event within 12 months or such longer time as the Executive may agree, make (or in relation to a carrier ensure that there has been made) a full assessment of the consequences of that emergency and the effectiveness of the emergency plans put into effect as a result of that emergency; and
- 1375 (3) within 28 days of the completion of that assessment make a report of the findings of the assessment and retain that report or a copy of it for at least 50 years from the date upon which the report was completed<sup>15</sup>.

The operator or carrier must provide to the Executive within 28 days of the making of the report under head (3) above a copy of that report<sup>16</sup>.

1 As to the meaning of 'operator' see PARA 668 note 4.

2 As to the meaning of 'carrier' see PARA 668 note 6.

3 Ie pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 7 or reg 8, as the case may be: see PARA 669.

- 4 As to the meaning of 'radiation emergency' see PARA 668 note 8.
- 5 As to the Health and Safety Executive see PARA 361 et seq.
- 6 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 13(1).
- 7 As to the meaning of 'local authority' see PARA 669 note 14.
- 8 le pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 9: see PARA 670.
- 9 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 13(2).
- 10 As to the meaning of 'work with ionising radiation' see PARA 668 note 1.
- 11 As to what is reasonably practicable see PARA 417.
- 12 As to the meaning of 'emergency services' see PARA 669 note 20.
- 13 As to the meaning of 'health authority' see PARA 669 note 21.
- 14 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 15 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 13(3) (amended by SI 2007/1573). In the event of a report so made relating to the circumstances of an emergency exposure and the action taken as a result of that exposure, an employer must keep such report (or a copy thereof) until the person to whom the report relates has or would have attained the age of 75 years but in any event for at least 50 years from the termination of the work which involved any emergency exposure: Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 14(10). As to the meaning of 'emergency exposure', and as to exemption from reg 14, see PARA 669 note 8.
- 16 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 13(4).

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### **673. Information to the public.**

An operator<sup>1</sup> or carrier<sup>2</sup> who carries out work with ionising radiation<sup>3</sup> from which a radiation emergency<sup>4</sup> is reasonably foreseeable must:

- 1376 (1) ensure that members of the public<sup>5</sup> who are in an area in which, in the opinion of the Health and Safety Executive<sup>6</sup>, they are likely to be affected by a radiation emergency arising from the undertaking of that operator or carrier, as the case may be, are supplied, in an appropriate manner, without their having to request it, with at least the specified information<sup>7</sup>; and
- 1377 (2) make that information publicly available<sup>8</sup>.

In preparing the information to be so supplied, the operator or carrier must consult each local authority<sup>9</sup> in the relevant area or areas referred to in head (1) above, any authority likely to be responsible for implementing emergency measures and action<sup>10</sup> and such other persons who seem to him to be appropriate<sup>11</sup>. However, the operator or carrier, as the case may be, remains responsible for the accuracy, completeness and form of the information so supplied<sup>12</sup>. Without prejudice to his duty under heads (1) and (2) above, the operator or carrier must endeavour to enter into an agreement with the local authority in the relevant area for that authority to disseminate the information so required to be supplied to the above-mentioned members of the public<sup>13</sup>.

The operator or carrier must review and where necessary revise the information referred to in heads (1) and (2) above at regular intervals but, in any case, not less than once in three years<sup>14</sup>. He must also review it whenever significant changes to the specified emergency measures, action and authorities<sup>15</sup> take place<sup>16</sup>.

The operator or carrier must ensure that the information referred to in heads (1) and (2) above is supplied in accordance with those provisions before carrying out work with ionising radiation to which the initial assessment made in accordance with the statutory requirements<sup>17</sup> applies and that the information is so supplied again and made publicly available at intervals not exceeding three years and, if it is revised<sup>18</sup>, as soon as is reasonably practicable<sup>19</sup> after the revision<sup>20</sup>.

Where a report of an assessment which has been made<sup>21</sup> relates to an assessment which identifies any reasonably foreseeable radiation emergency, the operator or carrier, as the case may be, must make that report available to the public as soon as is reasonably practicable after it has been sent to the Executive, except that, with the approval of the Executive, the operator or carrier need not make available any parts of such reports for reasons of industrial, commercial or personal confidentiality, public security or national defence<sup>22</sup>.

Every local authority must prepare and keep up to date arrangements to supply, in the event of any radiation emergency in that local authority's area (howsoever that emergency may arise), information of and advice on the facts of the emergency, of the steps to be taken and, as appropriate, of health protection measures applicable<sup>23</sup>. The arrangements so prepared and kept up to date must provide for the information to be supplied at regular intervals in an appropriate manner, without delay, and without their having to request it, to members of the public who are in that local authority's area and who are actually affected by the radiation

emergency<sup>24</sup>. In preparing those arrangements and keeping them up to date, the local authority must consult any authority likely to be responsible for implementing the relevant measures<sup>25</sup> and such other persons as appear to it to be appropriate<sup>26</sup>. The information and advice to be supplied in accordance with arrangements prepared and kept up to date under these provisions must, if relevant to the type of radiation emergency, include that specified<sup>27</sup> and must, in any event, mention the authority or authorities responsible for implementing the relevant measures<sup>28</sup>.

1 As to the meaning of 'operator' see PARA 668 note 4.

2 As to the meaning of 'carrier' see PARA 668 note 6.

3 As to the meaning of 'work with ionising radiation' see PARA 668 note 1.

4 As to the meaning of 'radiation emergency' see PARA 668 note 8.

5 As to the meaning of 'member of the public' see PARA 670 note 11.

6 As to the Health and Safety Executive see PARA 361 et seq.

7 I.e. the information specified in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Sch 9. That information is (1) basic facts about radioactivity and its effects on persons and on the environment; (2) the various types of radiation emergency covered and their consequences for the general public and the environment; (3) emergency measures envisaged to alert, protect and assist the general public in the event of a radiation emergency; (4) appropriate information on action to be taken by the general public in the event of a radiation emergency; (5) the authority or authorities responsible for implementing the emergency measures and action referred to in heads (3)-(4) above: Sch 9 paras 1-5.

8 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(1).

9 As to the meaning of 'local authority' see PARA 669 note 14.

10 I.e. any authority likely to fall within the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Sch 9 para 5: see note 7 head (5).

11 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(2).

12 See note 11.

13 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(3).

14 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(4) (a).

15 I.e. the emergency measures, action and authorities referred to in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Sch 9 paras 3, 4 and 5: see note 7 heads (3)-(5).

16 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(4) (b).

17 I.e. made in accordance with the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 4(1)(a) or (b), as the case may be: see PARA 668.

18 I.e. pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(4).

19 As to what is reasonably practicable see PARA 417.

20 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(5).

21 I.e. made pursuant to the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 6: see PARA 668.

22 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16(6).

23 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 17(1).

24 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 17(2). For these purposes, the members of the public referred to as actually affected are those whose co-operation is sought to put into effect any steps or health protection measures referred to in reg 17(1): reg 17(5).

25 I.e. the measures referred to in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 17(3), Sch 10: see note 26.

26 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 17(3). The information to be supplied in the event of a radiation emergency is as follows: (1) information on the type of emergency which has occurred, and, where possible, its characteristics, for example, its origin, extent and probable development; (2) advice on health protection measures, which, depending on the type of emergency, might include (a) any restrictions on the consumption of certain foodstuffs and water supply likely to be contaminated; (b) any basic rules on hygiene and decontamination; (c) any recommendation to stay indoors; (d) the distribution and use of protective substances; (e) any evacuation arrangements; (f) special warnings for certain population groups; (3) any announcements recommending co-operation with instructions or requests by the competent authorities; (4) where an occurrence which is likely to give rise to a release of radioactivity or ionising radiation has happened but no release has yet taken place, the information and advice should include the following (a) an invitation to tune in to radio or television; (b) preparatory advice to establishments with particular collective responsibilities; and (c) recommendations to occupational groups particularly affected; (5) if time permits, information setting out the basic facts about radioactivity and its effects on persons and on the environment: Sch 10 paras 1-5.

27 I.e. that specified in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, Sch 10: see note 26.

28 Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 17(4).

In so far as any provision of reg 17 is made under the European Communities Act 1972 s 2(2) (see PARA 340), the Health and Safety at Work etc Act 1974 ss 16-21 (approval of codes of practice and enforcement: see PARAS 372 et seq, 426); s 23 (provisions supplementary to ss 21, 22) and s 24 (appeal against improvement or prohibition notice: see PARA 379), so far as they relate to an improvement notice; s 26 (power to indemnify inspectors: see PARA 375); and ss 33-42 (provisions as to offences: see PARA 852 et seq) apply to that provision as if that provision had been made under s 15 (see PARA 424): Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 19 (amended by SI 2002/2099).

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## **7. RISKS IN PARTICULAR INDUSTRIES AND PREMISES**

### **(1) THE CONSTRUCTION INDUSTRY**

#### **(i) Design and Management of Projects in general**

##### **674. Introduction.**

The Construction (Design and Management) Regulations 2007<sup>1</sup> are commonly referred to as 'CDM'<sup>2</sup>. They contain a scheme of legally enforceable management duties to be discharged by all parties involved in the process of building, civil engineering and related activities. 'Construction work' to and in relation to which the regulations apply<sup>3</sup> means the carrying out of any building, civil engineering or engineering construction work and includes:

- 1378 (1) the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of

- corrosive or toxic substances), de-commissioning, demolition or dismantling of a structure<sup>4</sup>;
- 1379 (2) the preparation for an intended structure, including site clearance, exploration, investigation (but not site survey) and excavation, and the clearance or preparation of the site or structure for use or occupation at its conclusion;
- 1380 (3) the assembly on site of prefabricated elements to form a structure or the disassembly on site of prefabricated elements which, immediately before such disassembly, formed a structure;
- 1381 (4) the removal of a structure or of any product or waste resulting from demolition or dismantling of a structure or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure; and
- 1382 (5) the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure,

but does not include the exploration for or extraction of mineral resources or activities preparatory thereto carried out at a place where such exploration or extraction is carried out<sup>5</sup>.

Additional duties under the 2007 regulations<sup>6</sup> apply where a project<sup>7</sup> is notifiable<sup>8</sup> and is carried out for or on behalf of, or by, a client<sup>9</sup>. Duties relating to health and safety on construction sites<sup>10</sup> apply only in relation to a construction site<sup>11</sup>.

With certain exceptions<sup>12</sup>, breach of a duty imposed by the 2007 regulations does not confer a right of action in any civil proceedings in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed<sup>13</sup>.

There is an approved code of practice relating to managing construction for health and safety<sup>14</sup>.

Where the 2007 regulations apply, no person on whom the regulations place a duty may:

- 1383 (a) appoint or engage a CDM co-ordinator<sup>15</sup>, designer<sup>16</sup>, principal contractor<sup>17</sup> or contractor<sup>18</sup> unless he has taken reasonable steps to ensure that the person to be appointed or engaged is competent<sup>19</sup>;
- 1384 (b) accept such an appointment or engagement unless he is competent;
- 1385 (c) arrange for or instruct a worker to carry out or manage design or construction work unless the worker is competent or under the supervision of a competent person<sup>20</sup>.

Every person concerned in a project on whom a duty is placed by the 2007 regulations<sup>21</sup> must:

- 1386 (i) seek the co-operation of any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary to enable himself to perform any duty or function under those regulations; and
- 1387 (ii) co-operate with any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary to enable that person to perform any duty or function under those regulations<sup>22</sup>.

Every person concerned in a project who is working under the control of another person must report to that person anything which he is aware is likely to endanger the health or safety of himself or others<sup>23</sup>. All persons concerned in a project on whom a duty is placed by those regulations must co-ordinate their activities with one another in a manner which ensures, so far as is reasonably practicable, the health and safety of persons carrying out the construction work and affected by the construction work<sup>24</sup>.

Every person on whom a duty is placed by the 2007 regulations in relation to the design, planning and preparation of a project must take account of the general principles of prevention<sup>25</sup> in the performance of those duties during all the stages of the project<sup>26</sup>. Every person on whom a duty is placed by those regulations in relation to the construction phase<sup>27</sup> of a project must ensure so far as is reasonably practicable that the general principles of prevention are applied in the carrying out of the construction work<sup>28</sup>.

Where there is more than one client in relation to a project, if one or more of such clients elect in writing<sup>29</sup> to be treated for the purposes of the 2007 regulations as the only client or clients, no other client who has agreed in writing to such election is subject after such election and consent to any duty<sup>30</sup> owed by a client under those regulations<sup>31</sup>.

1     Ie the Construction (Design and Management) Regulations 2007, SI 2007/320: see reg 1. See the text and notes 2-31; and PARA 675 et seq.

2     The Construction (Design and Management) Regulations 2007, SI 2007/320, revoke and replace the Construction (Design and Management) Regulations 1994, SI 1994/3140, and revoke and re-enact, with modifications, the Construction (Health, Safety and Welfare) Regulations 1996, SI 1996/1592: see the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 48(1), Sch 4. For transitional provisions see reg 47.

3     See the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 3(2). Regulations 9(1) (b), 13(7), 22(1)(c), and Sch 2 (welfare facilities: see PARAS 675 head (2) and text to notes 41-42, 681 head (3), 697) apply only in relation to persons at work who are carrying out construction work: reg 3(5). As to the meaning of 'work' see PARA 302 note 1.

The 2007 regulations apply in Great Britain and outside Great Britain as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 8(1)(a) (see PARA 305): Construction (Design and Management) Regulations 2007, SI 2007/320, reg 3(1). As to the meaning of 'Great Britain' see PARA 305 note 7. Where a design is prepared or modified outside Great Britain for use in construction work to which the 2007 regulations apply, (1) the person who commissions it, if he is established within Great Britain; or (2) if that person is not so established, any client for the project, must ensure that reg 11 (duties of designers: see PARA 675) is complied with: reg 12. 'Client' means a person who in the course or furtherance of a business (a) seeks or accepts the services of another which may be used in the carrying out of a project for him; or (b) carries out a project himself; and 'business' means a trade, business or other undertaking (whether for profit or not): reg 2(1).

4     'Structure' means (1) any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbour, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipe-line, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature, fixed plant and any structure similar to the foregoing; or (2) any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work; and any reference to a structure includes a part of a structure: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

5     Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

6     Ie the Construction (Design and Management) Regulations 2007, SI 2007/320, Pt 3 (regs 14-24): see PARAS 676-682.

7     'Project' means a project which includes or is intended to include construction work and includes all planning, design, management or other work involved in a project until the end of the construction phase: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

8     For the purposes of the Construction (Design and Management) Regulations 2007, SI 2007/320, a project is notifiable if the construction phase is likely to involve more than 30 days or 500 person days, of construction work: reg 2(3). See PARA 676 et seq.

9     Construction (Design and Management) Regulations 2007, SI 2007/320, reg 3(3).

10    Ie the Construction (Design and Management) Regulations 2007, SI 2007/320, Pt 4 (regs 25-44): see PARAS 683-696.

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 3(4). 'Construction site' includes any place where construction work is being carried out or to which the workers have access, but does not include a workplace within it which is set aside for purposes other than construction work: reg 2(1). 'Workplace' means a workplace within the meaning of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (see PARA 456) other than a construction site: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

12 Ie breach of the duties imposed by the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 9(1)(b), 13(6), (7), 16, 22(1)(c), (l), 25(1), (2), (4), 26-44 and Sch 2. See PARAS 675 head (2) and text to notes 39-42, 676 head (2), 681 heads (3), (12), 683 text and notes 1-5, 684-696, 697 respectively.

13 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 45. As to the meaning of 'employee' see PARA 302 note 4.

14 As to codes of practice approved by the Health and Safety Executive see PARA 426.

15 'CDM co-ordinator' means the person appointed as the CDM co-ordinator under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(1) (see PARA 676): reg 2(1).

16 'Designer' means any person (including a client, contractor or other person referred to in the Construction (Design and Management) Regulations 2007, SI 2007/320) who in the course or furtherance of a business (1) prepares or modifies a design; or (2) arranges for or instructs any person under his control to do so, relating to a structure or to a product or mechanical or electrical system intended for a particular structure, and a person is deemed to prepare a design where a design is prepared by a person under his control: reg 2(1). 'Design' includes drawings, design details, specification and bill of quantities (including specification of articles or substances) relating to a structure, and calculations prepared for the purpose of a design: reg 2(1).

17 'Principal contractor' means the person appointed as the principal contractor under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(2) (see PARA 676): reg 2(1).

18 'Contractor' means any person (including a client, principal contractor or other person referred to in the Construction (Design and Management) Regulations 2007, SI 2007/320) who, in the course or furtherance of a business, carries out or manages construction work: reg 2(1).

19 Any reference in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 4 to a person being competent extends only to his being competent to (1) perform any requirement; and (2) avoid contravening any prohibition, imposed on him by or under any of the relevant statutory provisions: reg 4(2). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

20 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 4(1).

21 Ie including the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 5(2): see the text to note 23.

22 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 5(1).

23 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 5(2).

24 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 6. As to what is reasonably practicable see PARA 417.

25 'General principles of prevention' means the general principles of prevention specified in the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, Sch 1 (see PARA 433): Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

26 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 7(1).

27 'Construction phase' means the period of time starting when construction work in any project starts and ending when construction work in that project is completed: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

28 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 7(2). As to what is reasonably practical see PARA 417.

29 'Writing' includes writing which is kept in electronic form and which can be printed: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).



30 Ie save the duties in the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 5(1)(b), 10(1), 15 and 17(1) (see head (ii) in the text, PARA 675 text to notes 13-15, PARA 677 text to notes 1-10, 11-13 respectively) in so far as those duties relate to information in his possession.

31 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 8.

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**675. General duties of clients, designers and contractors.**

Every client<sup>1</sup> must take reasonable steps to ensure that the arrangements made for managing the project<sup>2</sup> (including the allocation of sufficient time and other resources) by persons with a duty under the Construction (Design and Management) Regulations 2007<sup>3</sup> (including the client himself) are suitable to ensure that:

- 1388 (1) the construction work<sup>4</sup> can be carried out so far as is reasonably practicable<sup>5</sup> without risk to the health and safety of any person;
- 1389 (2) the requirements as to welfare facilities<sup>6</sup> are complied with in respect of any person carrying out the construction work; and
- 1390 (3) any structure<sup>7</sup> designed for use as a workplace<sup>8</sup> has been designed taking account of the relevant provisions<sup>9</sup> which relate to the design of, and materials used in, the structure<sup>10</sup>.

The client must take reasonable steps to ensure that the arrangements referred to above are maintained and reviewed throughout the project<sup>11</sup>.

Every client must ensure that every person designing<sup>12</sup> the structure and every contractor<sup>13</sup> who has been or may be appointed by the client, is promptly provided with pre-construction information<sup>14</sup> in accordance with the following provisions<sup>15</sup>. The pre-construction information must consist of all the information in the client's possession (or which is reasonably obtainable), including:

- 1391 (a) any information about or affecting the site or the construction work;
- 1392 (b) any information concerning the proposed use of the structure as a workplace;
- 1393 (c) the minimum amount of time before the construction phase<sup>16</sup> which will be allowed to the contractors appointed by the client for planning and preparation for construction work; and
- 1394 (d) any information in any existing health and safety file<sup>17</sup>,

which is relevant to the person to whom the client provides it for the purposes specified below<sup>18</sup>. The specified purposes are:

- 1395 (i) to ensure so far as is reasonably practicable the health and safety of persons engaged in the construction work, liable to be affected by the way in which it is carried out, and who will use the structure as a workplace; and
- 1396 (ii) without prejudice to head (i) above, to assist the persons to whom information is provided under these provisions to perform their duties under the 2007 regulations and to determine the resources<sup>19</sup> which they are to allocate for managing the project<sup>20</sup>.

No designer<sup>21</sup> may commence work in relation to a project unless any client for the project is aware of his duties under the 2007 regulations<sup>22</sup>. The following duties must be performed so far as is reasonably practicable, taking due account of other relevant design considerations<sup>23</sup>.

Every designer must in preparing or modifying a design which may be used in construction work in Great Britain<sup>24</sup> avoid foreseeable risks to the health and safety of any person:

- 1397 (A) carrying out construction work;
- 1398 (B) liable to be affected by such construction work;
- 1399 (C) cleaning any window or any transparent or translucent wall, ceiling or roof in or on a structure;
- 1400 (D) maintaining the permanent fixtures and fittings of a structure; or
- 1401 (E) using a structure designed as a workplace<sup>25</sup>.

In discharging this duty, the designer must eliminate hazards which may give rise to risks and reduce risks from any remaining hazards, and in so doing must give collective measures priority over individual measures<sup>26</sup>.

In designing any structure for use as a workplace the designer must take account of the provisions of the relevant regulations<sup>27</sup> which relate to the design of, and materials used in, the structure<sup>28</sup>. The designer must take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist clients, other designers and contractors to comply with their duties under the 2007 regulations<sup>29</sup>.

No contractor may carry out construction work in relation to a project unless any client for the project is aware of his duties under the 2007 regulations<sup>30</sup>. Every contractor must plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety<sup>31</sup>. Every contractor must ensure that any contractor whom he appoints or engages in his turn in connection with a project is informed of the minimum amount of time which will be allowed to him for planning and preparation before he begins construction work<sup>32</sup>. Every contractor must provide every worker carrying out the construction work under his control with any information and training which he needs for the particular work to be carried out safely and without risk to health, including:

- 1402 (aa) suitable site induction, where not provided by any principal contractor<sup>33</sup>;
- 1403 (bb) information on the risks to their health and safety identified by his risk assessment under the Management of Health and Safety at Work Regulations 1999<sup>34</sup>, or arising out of the conduct by another contractor of his undertaking and of which he is or ought reasonably to be aware;
- 1404 (cc) the measures which have been identified by the contractor in consequence of the risk assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions;
- 1405 (dd) any site rules<sup>35</sup>;
- 1406 (ee) the procedures to be followed in the event of serious and imminent danger to such workers; and
- 1407 (ff) the identity of the persons nominated to implement those procedures<sup>36</sup>.

Without prejudice to the above requirements, every contractor must in the case of any of his employees<sup>37</sup> provide those employees with any health and safety training which he is required to provide to them in respect of the construction work by virtue of the Management of Health and Safety at Work Regulations 1999<sup>38</sup>.

No contractor may begin work on a construction site<sup>39</sup> unless reasonable steps have been taken to prevent access by unauthorised persons to that site<sup>40</sup>.

Every contractor must ensure, so far as is reasonably practicable, that the requirements as to welfare facilities<sup>41</sup> are complied with throughout the construction phase in respect of any person at work who is under his control<sup>42</sup>.

1 As to the meaning of 'client' see PARA 674 note 3.

2 As to the meaning of 'project' see PARA 674 note 7.

3 Ie the Construction (Design and Management) Regulations, SI 2007/320: see PARA 674, the text and notes 2-41; and PARA 676 et seq.

4 As to the meaning of 'construction work' see PARA 674.

5 As to what is reasonably practicable see PARA 417.

6 Ie the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2: see PARA 697.

7 As to the meaning of 'structure' see PARA 674 note 4.

8 As to the meaning of 'workplace' see PARA 674 note 11.

9 Ie the relevant provisions of the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004: see PARA 456 et seq.

10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 9(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by reg 9(1)(b) (head (2) in the text) confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 9(2).

12 As to the meaning of 'design' see PARA 674 note 16.

13 As to the meaning of 'contractor' see PARA 674 note 18.

14 'Pre-construction information' means the information described in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10 and, where the project is notifiable (see PARA 677 text to notes 1-10), reg 15: reg 2(1). As to the meaning of 'notifiable' see PARA 674 note 8.

15 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(1).

16 As to the meaning of 'construction phase' see PARA 674 note 27.

17 'Health and safety file' (1) means the record referred to in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(2)(e) (see PARA 679 head (vi)); and (2) includes a health and safety file prepared under the Construction (Design and Management) Regulations 1994, SI 1994/3140, reg 14(d) (revoked): Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

18 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(2).

19 Ie the resources referred to in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 9(1).

20 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(3).

21 As to the meaning of 'designer' see PARA 674 note 16.

22 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(1).

23 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(2).

24 As to the meaning of 'Great Britain' see PARA 305 note 7. As to designs prepared or modified outside Great Britain see PARA 674 note 3.

25 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(3).

- 26 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(4).
- 27 Ie the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004: see PARA 456 et seq.
- 28 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(5).
- 29 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 11(6).
- 30 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(1).
- 31 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(2).
- 32 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(3).
- 33 As to the meaning of 'principal contractor' see PARA 674 note 17.
- 34 Ie under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.
- 35 'Site rules' means the rules described in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1)(d) (see PARA 681 head (4)): reg 2(1).
- 36 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(4).
- 37 As to the meaning of 'employee' see PARA 302 note 4.
- 38 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(5). The training referred to in the text is that required by virtue of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 13(2)(b): see PARA 443.
- 39 As to the meaning of 'construction site' see PARA 674 note 11.
- 40 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(6). Breach of a duty imposed by reg 13(6) confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.
- 41 Ie the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2: see PARA 697.
- 42 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(7). Breach of a duty imposed by reg 13(7) confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

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## **(ii) Additional Duties where Project is Notifiable**

### **676. Appointment of CDM co-ordinator and principal contractor.**

Where a project<sup>1</sup> is notifiable<sup>2</sup>, the client<sup>3</sup> must appoint<sup>4</sup> a person (the 'CDM co-ordinator') to perform specified duties<sup>5</sup> as soon as is practicable<sup>6</sup> after initial design<sup>7</sup> work or other preparation for construction work<sup>8</sup> has begun<sup>9</sup>. After appointing a CDM co-ordinator, the client must appoint a person (the 'principal contractor') to perform specified duties<sup>10</sup> as soon as is practicable after the client knows enough about the project to be able to select a suitable person for such appointment<sup>11</sup>. The client must ensure that such appointments are changed or renewed as necessary to ensure that there is at all times until the end of the construction phase<sup>12</sup> a CDM co-ordinator and principal contractor<sup>13</sup>.

The client is be deemed for the purposes of the Construction (Design and Management) Regulations 2007<sup>14</sup> to have been appointed as the CDM co-ordinator or principal contractor, or both, for any period for which no person (including himself) has been so appointed, and accordingly is subject to the duties imposed on a CDM co-ordinator<sup>15</sup> or, as the case may be, the duties imposed on a principal contractor<sup>16</sup>, or both sets of duties<sup>17</sup>.

Where the project is notifiable, the client must ensure that the construction phase does not start unless (1) the principal contractor has prepared a construction phase plan<sup>18</sup> which complies with the specified requirements<sup>19</sup>; and (2) he is satisfied that the requirements as to the provision of welfare facilities<sup>20</sup> will be complied with during the construction phase<sup>21</sup>.

1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'client' see PARA 674 note 3.

4 Any reference in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14 to appointment is to appointment in writing: reg 14(5). As to the meaning of 'writing' see PARA 674 note 29.

5 Ie the duties specified in the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 20, 21: see PARA 679.

6 As to what is practicable see PARA 417.

7 As to the meaning of 'design' see PARA 674 note 16.

8 As to the meaning of 'construction work' see PARA 674.

9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(1). As to the application of the 2007 regulations see PARA 674.

10 Ie the duties specified in the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 22-24: see PARAS 680-681.

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(2).

12 As to the meaning of 'construction phase' see PARA 674 note 27.

13 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(3).

14     le the Construction (Design and Management) Regulations 2007, SI 2007/320, except regs 14(1), (2), 18(1) and 19(1)(a): see PARAS 676 text to notes 1-11, 678 text to notes 1-5, 682 head (1).

15     le by the Construction (Design and Management) Regulations 2007, SI 2007/320, except regs 20, 21.

16     le by the Construction (Design and Management) Regulations 2007, SI 2007/320, except regs 22-24.

17     Construction (Design and Management) Regulations 2007, SI 2007/320, reg 14(4).

18     'Construction phase plan' means a document recording the health and safety arrangements, site rules and any special measures for construction work: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1). Any reference in those regulations to a plan, rules, document, report or copy includes a plan, rules, document, report or copy which is kept in a form (1) in which it is capable of being reproduced as a printed copy when required; and (2) which is secure from loss or unauthorised interference: reg 2(2). As to the meaning of 'site rules' see PARA 675 note 35.

19     le the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 23(1)(a), (2): see PARA 680 head (1) and text to note 12. As to the causative impact of the lack of a health and safety plan see *McCook v Lobo* [2002] EWCA Civ 1760, [2003] ICR 89, [2002] All ER (D) 272 (Nov).

20     le the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1)(c): see PARA 681 head (3).

21     Construction (Design and Management) Regulations 2007, SI 2007/320, reg 16. Breach of a duty imposed by reg 16 confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

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### **677. Client's duties in relation to information.**

Where the project<sup>1</sup> is notifiable<sup>2</sup>, the client<sup>3</sup> must promptly provide the CDM co-ordinator<sup>4</sup> with pre-construction information consisting of (1) all the information to be provided to any person where a project is not notifiable<sup>5</sup>; (2) any further information<sup>6</sup> in the client's possession (or which is reasonably obtainable) which is relevant to the CDM co-ordinator for the specified purposes<sup>7</sup>, including the minimum amount of time before the construction phase<sup>8</sup> which will be allowed to the principal contractor<sup>9</sup> for planning and preparation for construction work<sup>10</sup>.

The client must ensure that the CDM co-ordinator is provided with all the health and safety information in the client's possession (or which is reasonably obtainable) relating to the project which is likely to be needed for inclusion in the health and safety file<sup>11</sup>, including specified<sup>12</sup> information about asbestos<sup>13</sup>.

The client must take reasonable steps to ensure that after the construction phase the information in the health and safety file is kept available for inspection by any person who may need it to comply with the relevant statutory provisions<sup>14</sup> and is revised as often as may be appropriate to incorporate any relevant new information<sup>15</sup>.

1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'client' see PARA 674 note 3.

4 As to the meaning of 'CDM co-ordinator' see PARA 676.

5 Ie all the information described in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(2) to be provided to any person in pursuance of reg 10(1): see PARA 675.

6 Ie as described in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(2).

7 Ie the purposes specified in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 10(3): see PARA 675.

8 As to the meaning of 'construction phase' see PARA 674 note 27.

9 As to the meaning of 'principal contractor' see PARA 674 note 17.

10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 15. As to the application of the 2007 regulations see PARA 674. As to the meaning of 'construction work' see PARA 674.

11 As to the meaning of 'health and safety file' see PARA 675 note 17.

12 Ie the information specified in the Control of Asbestos Regulations 2006, SI 2006/2739, reg 4(9)(c): see PARA 630 note 14.

13 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 17(1). Where a single health and safety file relates to more than one project, site or structure, or where it includes other related information, the client must ensure that the information relating to each site or structure can be easily identified: reg 17(2).

14 It is sufficient compliance with this requirement by a client who disposes of his entire interest in the structure if he delivers the health and safety file to the person who acquires his interest in it and ensures that



he is aware of the nature and purpose of the file: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 17(4).

15 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 17(3).

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#### **678. Additional duties of designer.**

Where a project<sup>1</sup> is notifiable<sup>2</sup>, no designer<sup>3</sup> may commence work (other than initial design work) in relation to the project unless a CDM co-ordinator<sup>4</sup> has been appointed for the project<sup>5</sup>. The designer must take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist the CDM co-ordinator to comply with his duties under the Construction (Design and Management) Regulations 2007<sup>6</sup>, including his duties in relation to the health and safety file<sup>7</sup>.

1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'designer' see PARA 674 note 16.

4 As to the meaning of 'CDM co-ordinator' and as to his appointment see PARA 676.

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 18(1). As to the application of the 2007 regulations see PARA 674. As to the designer's duties generally see PARA 675.

6 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320: see PARA 679.

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 18(2). As to the meaning of 'health and safety file' see PARA 675 note 17.

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## 679. Duties of CDM co-ordinator.

The CDM co-ordinator<sup>1</sup> must:

- 1408 (1) give suitable and sufficient advice and assistance to the client<sup>2</sup> on undertaking the measures he needs to take to comply with the Construction (Design and Management) Regulations 2007<sup>3</sup> during the project<sup>4</sup> (including, in particular, assisting the client in complying with client's duty in relation to arrangements for managing the project<sup>5</sup> and in relation to the start of the construction phase<sup>6</sup>);
- 1409 (2) ensure that suitable arrangements are made and implemented for the co-ordination of health and safety measures during planning and preparation for the construction phase, including facilitating co-operation and co-ordination between persons concerned in the project<sup>7</sup>, and the application of the general principles of prevention<sup>8</sup>; and
- 1410 (3) liaise with the principal contractor<sup>9</sup> regarding (a) the contents of the health and safety file<sup>10</sup>; (b) the information which the principal contractor needs to prepare the construction phase plan<sup>11</sup>; and (c) any design development which may affect planning and management of the construction work<sup>12</sup>.

Without prejudice to the above the CDM co-ordinator must:

- 1411 (i) take all reasonable steps to identify and collect the pre-construction information;
- 1412 (ii) promptly provide in a convenient form to every person designing the structure and every contractor who has been or may be appointed by the client (including the principal contractor), such of the pre-construction information in his possession as is relevant to each;
- 1413 (iii) take all reasonable steps to ensure that designers comply with their duties<sup>13</sup>;
- 1414 (iv) take all reasonable steps to ensure co-operation between designers and the principal contractor during the construction phase in relation to any design<sup>14</sup> or change to a design;
- 1415 (v) prepare, where none exists, and otherwise review and update a record (the 'health and safety file') containing information relating to the project which is likely to be needed during any subsequent construction work to ensure the health and safety of any person<sup>15</sup>; and
- 1416 (vi) at the end of the construction phase, pass the health and safety file to the client<sup>16</sup>.

The CDM co-ordinator must as soon as is practicable after his appointment ensure that notice<sup>17</sup> is given to the Health and Safety Executive<sup>18</sup> containing such of the specified particulars<sup>19</sup> as are available<sup>20</sup>. Where any of the specified particulars have not been notified because a principal contractor has not yet been appointed, notice of such particulars must be given to the Executive as soon as is practicable after the appointment of the principal contractor, and in any event before the start of the construction work<sup>21</sup>.

- 1 As to the meaning of 'CDM co-ordinator' and as to his appointment see PARA 676.
- 2 As to the meaning of 'client' see PARA 674 note 3.
- 3 le under the Construction (Design and Management) Regulations 2007, SI 2007/320.
- 4 As to the meaning of 'project' see PARA 674 note 7.
- 5 le the client's duty under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 9: see PARA 675.
- 6 le the client's duty under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 16: see PARA 676. As to the meaning of 'construction phase' see PARA 674 note 27.
- 7 le in pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 5, 6: see PARA 674.
- 8 le in pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 7: see PARA 674. As to the meaning of 'general principles of prevention' see PARA 674 note 25.
- 9 As to the meaning of 'principal contractor' see PARA 674 note 17.
- 10 As to the meaning of 'health and safety file' see PARA 675 note 17.
- 11 As to the meaning of 'construction phase plan' see PARA 676 note 18.
- 12 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(1). As to the application of the 2007 regulations see PARA 674.
- 13 le their duties under the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 11, 18(2): see PARAS 675, 678.
- 14 As to the meaning of 'design' see PARA 674 note 16.
- 15 le including the information provided in pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 17(1), 18(2) and 22(1)(j): see PARAS 677 text and notes 11-13, 678 text to notes 6-7, 681 head (10).
- 16 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(2).
- 17 Any notice under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21(1) or (2) must be signed by or on behalf of the client or, if sent by electronic means, must otherwise show that he has approved it: reg 21(3).
- 18 As to the Health and Safety Executive see PARA 361 et seq. In so far as the project includes construction work of a description for which the Office of Rail Regulation is made the enforcing authority by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195), the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21(1), (2) has effect as if any reference to the Executive were a reference to the Office of Rail Regulation: reg 21(4).
- 19 le the particulars specified in the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 1. The particulars to be notified are: (1) date of forwarding; (2) exact address of the construction site; (3) the name of the local authority where the site is located; (4) a brief description of the project and the construction work which it includes; (5) contact details of the client (name, address, telephone number and any e-mail address); (6) contact details of the CDM co-ordinator (name, address, telephone number and any e-mail address); (7) contact details of the principal contractor (name, address, telephone number and any e-mail address); (8) date planned for the start of the construction phase; (9) the time allowed by the client to the principal contractor referred to in reg 15(b) (see PARA 677 head (2)) for planning and preparation for construction work; (10) planned duration of the construction phase; (11) estimated maximum number of people at work on the construction site; (12) planned number of contractors on the construction site; (13) name and address of any contractor already appointed; (14) name and address of any designer already engaged; (15) a declaration signed by or on behalf of the client that he is aware of his duties under the 2007 regulations: Sch 1. As to the meaning of 'construction site' see PARA 674 note 11; as to the meaning of 'construction work' see PARA 674; as to the meaning of 'contractor' see PARA 674 note 18; and as to the meaning of 'designer' see PARA 674 note 16.

- 20 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21(1).
- 21 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21(2).

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# **680. Principal contractor's duties relating to the construction phase plan.**

Where a project<sup>1</sup> is notifiable<sup>2</sup>, the principal contractor<sup>3</sup> must:

- 1417 (1) before the start of the construction phase<sup>4</sup>, prepare a construction phase plan<sup>5</sup> which is sufficient to ensure that the construction phase is planned, managed and monitored in a way which enables the construction work<sup>6</sup> to be started so far as is reasonably practicable<sup>7</sup> without risk to health or safety, paying adequate regard to the information provided by the designer<sup>8</sup> and the pre-construction information provided<sup>9</sup> by the CDM co-ordinator<sup>10</sup>;
- 1418 (2) from time to time and as often as may be appropriate throughout the project update, review, revise and refine the construction phase plan so that it continues to be sufficient to ensure that the construction phase is planned, managed and monitored in a way which enables the construction work to be carried out so far as is reasonably practicable without risk to health or safety; and
- 1419 (3) arrange for the construction phase plan to be implemented in a way which will ensure so far as is reasonably practicable the health and safety of all persons carrying out the construction work and all persons who may be affected by the work<sup>11</sup>.

The principal contractor must take all reasonable steps to ensure that the construction phase plan identifies the risks to health and safety arising from the construction work (including the risks specific to the particular type of construction work concerned) and includes suitable and sufficient measures to address such risks, including any site rules<sup>12</sup>.

1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'principal contractor' see PARA 674 note 17.

4 As to the meaning of 'construction phase' see PARA 674 note 27.

5 As to the meaning of 'construction phase plan' see PARA 676 note 18.

6 As to the meaning of 'construction work' see PARA 674.

7 As to what is reasonably practicable see PARA 417.

8 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 11(6), 18(2) (see PARAS 675, 678 respectively). As to the meaning of 'designer' see PARA 674 note 16.

9 Ie provided under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(2)(b): see PARA 679 head (ii).

10 As to the meaning of 'CDM co-ordinator' see PARA 676.

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 23(1). As to the application of the 2007 regulations see PARA 674. As to the causative impact of the lack of a construction phase plan (formerly a health and safety plan) see *McCook v Lobo* [2002] EWCA Civ 1760, [2003] ICR 89, [2002] All ER (D) 272 (Nov).

12 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 23(2). As to the meaning of 'site rules' see PARA 675 note 35.

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### **681. Other duties of principal contractor.**

Where a project<sup>1</sup> is notifiable<sup>2</sup>, the principal contractor<sup>3</sup> for the project must:

- 1420 (1) plan, manage and monitor the construction phase<sup>4</sup> in a way which ensures that, so far as is reasonably practicable<sup>5</sup>, it is carried out without risks to health or safety, including facilitating co-operation and co-ordination between persons concerned in the project<sup>6</sup> and the application of the general principles of prevention<sup>7</sup>;
- 1421 (2) liaise with the CDM co-ordinator<sup>8</sup> in performing his duties to ensure co-operation<sup>9</sup> during the construction phase<sup>10</sup> in relation to any design<sup>11</sup> or change to a design;
- 1422 (3) ensure that welfare facilities sufficient to comply with the specified requirements<sup>12</sup> are provided throughout the construction phase;
- 1423 (4) where necessary for health and safety, draw up rules which are appropriate to the construction site<sup>13</sup> and the activities on it (referred to as 'site rules')<sup>14</sup>;
- 1424 (5) give reasonable directions to any contractor<sup>15</sup> so far as is necessary to enable the principal contractor to comply with his duties under the Construction (Design and Management) Regulations 2007<sup>16</sup>;
- 1425 (6) ensure that every contractor is informed of the minimum amount of time which will be allowed to him for planning and preparation before he begins construction work<sup>17</sup>;
- 1426 (7) where necessary, consult a contractor before finalising such part of the construction phase plan<sup>18</sup> as is relevant to the work to be performed by him;
- 1427 (8) ensure that every contractor is given, before he begins construction work and in sufficient time to enable him to prepare properly for that work, access to such part of the construction phase plan as is relevant to the work to be performed by him;
- 1428 (9) ensure that every contractor is given, before he begins construction work and in sufficient time to enable him to prepare properly for that work, such further information as he needs to comply punctually with the duty to ensure that the requirements as to welfare facilities are complied with<sup>19</sup> and to carry out the work to be performed by him without risk, so far as is reasonably practicable, to the health and safety of any person;
- 1429 (10) identify to each contractor the information relating to the contractor's activity which is likely to be required by the CDM co-ordinator for inclusion in the health and safety file<sup>20</sup> and ensure that such information is promptly provided to the CDM co-ordinator;
- 1430 (11) ensure that the particulars required to be in the notice given to the Health and Safety Executive<sup>21</sup> are displayed in a readable condition in a position where they can be read by any worker engaged in the construction work; and
- 1431 (12) take reasonable steps to prevent access by unauthorised persons to the construction site<sup>22</sup>.



The principal contractor must take all reasonable steps to ensure that every worker carrying out the construction work is provided with:

- 1432 (a) a suitable site induction;
- 1433 (b) the information and training<sup>23</sup> by a contractor on whom a duty is placed to provide such information and training; and
- 1434 (c) any further information and training which he needs for the particular work to be carried out without undue risk to health or safety<sup>24</sup>.

The principal contractor must:

- 1435 (i) make and maintain arrangements which will enable him and the workers engaged in the construction work to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of the workers and in checking the effectiveness of such measures;
- 1436 (ii) consult those workers or their representatives in good time on matters connected with the project which may affect their health, safety or welfare, so far as they or their representatives are not so consulted on those matters by any employer of theirs;
- 1437 (iii) ensure that such workers or their representatives can inspect and take copies of any information which the principal contractor has, or which the 2007 regulations require to be provided to him, which relates to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site, except any information:

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- 1. (A) the disclosure of which would be against the interests of national security;
- 2. (B) which he could not disclose without contravening a prohibition imposed by or under an enactment;
- 3. (C) relating specifically to an individual, unless he has consented to its being disclosed;
- 4. (D) the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to his undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or
- 5. (E) obtained by him for the purpose of bringing, prosecuting or defending any legal proceedings<sup>25</sup>.

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1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'principal contractor' see PARA 674 note 17.

4 As to the meaning of 'construction phase plan' see PARA 676 note 18.

5 As to what is reasonably practicable see PARA 417.

6 In pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 5, 6: see PARA 674.

7 In pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 7: see PARA 674. As to the meaning of 'general principles of prevention' see PARA 674 note 25.

8 As to the meaning of 'CDM co-ordinator' see PARA 676.

9     Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(2)(d): see PARA 679 head (iv).

10    As to the meaning of 'construction phase' see PARA 674 note 27.

11    As to the meaning of 'design' see PARA 674 note 16.

12    Ie the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2: see PARA 697.

13    As to the meaning of 'construction site' see PARA 674 note 11.

14    As to references to rules see PARA 676 note 18.

15    As to the meaning of 'contractor' see PARA 674 note 18.

16    Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320: see PARAS 680-681.

17    As to the meaning of 'construction work' see PARA 674.

18    As to the meaning of 'construction phase plan' see PARA 676 note 18.

19    Ie the duty under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(7): see PARA 675 text to notes 41-42.

20    Ie in pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 20(2) (e): see PARA 679 head (v). As to the meaning of 'health and safety file' see PARA 675 note 17.

21    Ie the notice under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21: see PARA 679.

22    Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by reg 22(1)(c), (l) (heads (3), (12) in the text) confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

<sup>23</sup>    Ie the information and training referred to in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(4): see PARA 675 text to notes 33-36.

24    Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(2).

25    Construction (Design and Management) Regulations 2007, SI 2007/320, reg 24.

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## **682. Additional duties of contractors.**

Where a project<sup>1</sup> is notifiable<sup>2</sup>, no contractor<sup>3</sup> may carry out construction work<sup>4</sup> in relation to the project unless:

- 1438 (1) he has been provided with the names of the CDM co-ordinator<sup>5</sup> and principal contractor<sup>6</sup>;
- 1439 (2) he has been given access to such part of the construction phase plan<sup>7</sup> as is relevant to the work to be performed by him, containing sufficient detail in relation to such work; and
- 1440 (3) notice of the project has been given<sup>8</sup> to the Health and Safety Executive, or as the case may be the Office of Rail Regulation<sup>9</sup>.

Every contractor must:

- 1441 (a) promptly provide the principal contractor with any information (including any relevant part of any risk assessment in his possession or control) which might affect the health or safety of any person carrying out the construction work or of any person who may be affected by it, or might justify a review of the construction phase plan, or which has been identified for inclusion in the health and safety file<sup>10</sup>;
- 1442 (b) promptly identify any contractor whom he appoints or engages in his turn in connection with the project to the principal contractor;
- 1443 (c) comply with any directions of the principal contractor given to him<sup>11</sup>, and any site rules<sup>12</sup>;
- 1444 (d) promptly provide the principal contractor with the information in relation to any death, injury, condition or dangerous occurrence which the contractor is required<sup>13</sup> to notify or report<sup>14</sup>.

Every contractor must:

- 1445 (i) in complying with his duty to plan, manage and monitor construction work to ensure that it is carried out without risks to health and safety<sup>15</sup>, take all reasonable steps to ensure that the construction work is carried out in accordance with the construction phase plan;
- 1446 (ii) take appropriate action to ensure health and safety where it is not possible to comply with the construction phase plan in any particular case; and
- 1447 (iii) notify the principal contractor of any significant finding which requires the construction phase plan to be altered or added to<sup>16</sup>.

1 As to the meaning of 'project' see PARA 674 note 7.

2 As to the meaning of 'notifiable' see PARA 674 note 8.

3 As to the meaning of 'contractor' see PARA 674 note 18.

4 As to the meaning of 'construction work' see PARA 674.

- 5 As to the meaning of 'CDM co-ordinator' see PARA 676.
- 6 As to the meaning of 'principal contractor' see PARA 674 note 17.
- 7 As to the meaning of 'construction phase plan' see PARA 676 note 18.
- 8 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 21: see PARA 679.
- 9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 19(1). As to the application of the 2007 regulations see PARA 674. As to the Health and Safety Executive see PARA 361 et seq, and as to where the notice must be given to the Office of Rail Regulation see PARA 679 note 18. As to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 49 et seq.
- 10 Ie in pursuance of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1) (j): see PARA 681 head (10). As to the meaning of 'health and safety file' see PARA 675 note 17.
- 11 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1)(e): see PARA 681 head (5).
- 12 As to the meaning of 'site rules' see PARA 675 note 35.
- 13 Ie under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163: see PARA 399 et seq.
- 14 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 19(2).
- 15 Ie his duty under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(2): see PARA 675.
- 16 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 19(3).

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### **(iii) Health, Safety and Welfare; in general**

#### **683. General duties imposed by the relevant regulations.**

Every contractor<sup>1</sup> carrying out construction work<sup>2</sup> must comply with the requirements relating to health and safety on construction sites<sup>3</sup> in so far as they affect him or any person carrying out construction work under his control or relate to matters within his control<sup>4</sup>.

Every person (other than a contractor carrying out construction work) who controls the way in which any construction work is carried out by a person at work must comply with the requirements relating to health and safety on construction sites in so far as they relate to matters which are within his control<sup>5</sup>.

Every person at work on construction work under the control of another person must report to that person any defect which he is aware may endanger the health and safety of himself or another person<sup>6</sup>.

1 As to the meaning of 'contractor' see PARA 674 note 18.

2 As to the meaning of 'construction work' see PARA 674.

3 ie the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 26-44: see PARAS 684-696. As to the meaning of 'construction site' see PARA 674 note 11.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 25(1). As to the application of the 2007 regulations see PARA 674. Regulation 25(1), (2) (see the text to note 5) does not apply to reg 33 (reports of inspections: see PARA 689), which expressly says on whom the duties in that regulation are imposed: reg 25(4). Breach of a duty imposed by reg 25(1), (2), (4) (see the text and note 5) confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13. The control required for these purposes relates to control over the work of construction, rather than the general control exercised by an occupier: *McCook v Lobo* [2002] EWCA Civ 1760, [2003] ICR 89, [2002] All ER (D) 272 (Nov).

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 25(2); and see note 4. As to the meaning of 'work' see PARA 302 note 1.

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 25(3).

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#### **684. Safe places of work and orderly construction sites.**

There must, so far as is reasonably practicable<sup>1</sup>, be suitable and sufficient safe access to and egress from every place of work<sup>2</sup> and to and from every other place provided for the use of any person while at work, which access and egress must be properly maintained<sup>3</sup>. Every place of work must, so far as is reasonably practicable, be made and kept safe for, and without risks to health to, any person at work there<sup>4</sup>. Suitable and sufficient steps must be taken to ensure, so far as is reasonably practicable, that no person uses access or egress, or gains access to any place, which does not comply with these requirements<sup>5</sup>.

Every place of work must, so far as is reasonably practicable, have sufficient working space and be so arranged that it is suitable for any person who is working or who is likely to work there, taking account of any necessary work equipment<sup>6</sup> present<sup>7</sup>.

Every part of a construction site<sup>8</sup> must, so far as is reasonably practicable, be kept in good order and every part of a construction site which is used as a place of work must be kept in a reasonable state of cleanliness<sup>9</sup>. Where necessary in the interests of health and safety, a construction site must, so far as is reasonably practicable and in accordance with the level of risk posed, either have its perimeter identified by suitable signs and be so arranged that its extent is readily identifiable or be fenced off, or both<sup>10</sup>. No timber or other material with projecting nails (or similar sharp object) may be used in any work or be allowed to remain in any place, if the nails (or similar sharp object) may be a source of danger to any person<sup>11</sup>.

1 As to what is reasonably practicable see PARA 417.

2 'Place of work' means any place which is used by any person at work for the purposes of construction work or for the purposes of any activity arising out of or in connection with construction work: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1). As to the meaning of 'construction work' see para 674. As to the meaning of 'work' see para 302 note 1.

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 26(1). As to the application of the 2007 regulations see para 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and para 674 text and notes 12-13.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 26(2).

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 26(3).

6 'Work equipment' means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not): Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 26(4).

8 As to the meaning of 'construction site' see para 674 note 11.

9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 27(1).

10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 27(2).

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 27(3).



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**685. Stability of structures; demolition or dismantling.**

All practicable<sup>1</sup> steps must be taken, where necessary to prevent danger to any person, to ensure that any new or existing structure<sup>2</sup> or any part of such structure which may become unstable or in a temporary state of weakness or instability due to the carrying out of construction work<sup>3</sup> does not collapse<sup>4</sup>.

Any buttress, temporary support or temporary structure must be of such design and so installed and maintained as to withstand any foreseeable loads which may be imposed on it, and must only be used for the purposes for which it is so designed, installed and maintained<sup>5</sup>.

No part of a structure may be so loaded as to render it unsafe to any person<sup>6</sup>.

The demolition or dismantling of a structure, or part of a structure, must be planned and carried out in such a manner as to prevent danger or, where it is not practicable to prevent it, to reduce danger to as low a level as is reasonably practicable<sup>7</sup>. The arrangements for carrying out such demolition or dismantling must be recorded in writing<sup>8</sup> before the demolition or dismantling work begins<sup>9</sup>.

1 As to what is practicable see PARA 417.

2 As to the meaning of 'structure' see PARA 674 note 4.

3 As to the meaning of 'construction work' see PARA 674.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 28(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

<sup>5</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 28(2).

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 28(3).

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 29(1).

8 As to the meaning of 'writing' see PARA 674 note 29.

9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 29(2).



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#### **686. Explosives.**

So far as is reasonably practicable<sup>1</sup>, explosives must be stored, transported and used safely and securely<sup>2</sup>. Without prejudice to this requirement, an explosive charge may be used or fired only if suitable and sufficient steps have been taken to ensure that no person is exposed to risk of injury from the explosion or from projected or flying material caused thereby<sup>3</sup>.

1 As to what is reasonably practicable see PARA 417.

2 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 30(1). As to the application of the 2007 regulations see para 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and para 674 text and notes 12-13.

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 30(2).

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## **687. Excavations.**

All practicable<sup>1</sup> steps must be taken, where necessary to prevent danger to any person, including, where necessary, the provision of supports or battering, to ensure that:

- 1448 (1) any excavation<sup>2</sup> or part of an excavation does not collapse;
- 1449 (2) no material from a side or roof of, or adjacent to, any excavation is dislodged or falls; and
- 1450 (3) no person is buried or trapped in an excavation by material which is dislodged or falls<sup>3</sup>.

Suitable and sufficient steps must be taken to prevent any person, work equipment<sup>4</sup>, or any accumulation of material from falling into any excavation<sup>5</sup>.

Without prejudice to the above requirements, suitable and sufficient steps must be taken, where necessary, to prevent any part of an excavation or ground adjacent to it from being overloaded by work equipment or material<sup>6</sup>.

Construction work<sup>7</sup> must not be carried out in an excavation where any supports or battering have been provided unless:

- 1451 (a) the excavation and any work equipment and materials which affect its safety, have been inspected by a competent person (i) at the start of the shift in which the work is to be carried out; (ii) after any event likely to have affected the strength or stability of the excavation; and (iii) after any material unintentionally falls or is dislodged; and
- 1452 (b) the person who carried out the inspection is satisfied that the work can be carried out there safely<sup>8</sup>.

Where the person who carried out the inspection has<sup>9</sup> informed the person on whose behalf the inspection was carried out of any matter about which he is not satisfied, work must not be carried out in the excavation until the matters have been satisfactorily remedied<sup>10</sup>.

1 As to what is practicable see PARA 417.

2 'Excavation' includes any earthwork, trench, well, shaft, tunnel or underground working: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

4 As to the meaning of 'work equipment' see PARA 684 note 6.

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(2).

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(3).

- 7 As to the meaning of 'construction work' see PARA 674.
- 8 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(4).
- 9 le under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(1)(a): see PARA 689 head (1).
- 10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31(5).

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# **688. Cofferdams and caissons.**

Every cofferdam or caisson must be (1) of suitable design and construction; (2) appropriately equipped so that workers can gain shelter or escape if water or materials enter it; and (3) properly maintained<sup>1</sup>.

A cofferdam or caisson may be used to carry out construction work<sup>2</sup> only if:

- 1453 (a) the cofferdam or caisson, and any work equipment<sup>3</sup> and materials which affect its safety, have been inspected by a competent person (i) at the start of the shift in which the work is to be carried out; and (ii) after any event likely to have affected the strength or stability of the cofferdam or caisson; and
- 1454 (b) the person who carried out the inspection is satisfied that the work can be safely carried out there<sup>4</sup>.

Where the person who carried out the inspection has<sup>5</sup> informed the person on whose behalf the inspection was carried out of any matter about which he is not satisfied, work must not be carried out in the cofferdam or caisson until the matters have been satisfactorily remedied<sup>6</sup>.

1 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 32(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

2 As to the meaning of 'construction work' see PARA 674.

3 As to the meaning of 'work equipment' see PARA 684 note 6.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 32(2).

5 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(1)(a): see PARA 689 head (1).

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 32(3).

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### **689. Reports of inspections.**

Subject to certain exceptions<sup>1</sup>, the person who carries out an inspection<sup>2</sup> must, before the end of the shift within which the inspection is completed:

- 1455 (1) where he is not satisfied that the construction work<sup>3</sup> can be carried out safely at the place inspected, inform the person for whom the inspection was carried out of any matters about which he is not satisfied; and
- 1456 (2) prepare a report which must include the specified<sup>4</sup> particulars<sup>5</sup>.

A person who prepares such a report must, within 24 hours of completing the inspection to which the report relates, provide the report or a copy of it to the person on whose behalf the inspection was carried out<sup>6</sup>.

Where the person owing a duty under the above provisions is an employee or works under the control of another, his employer or, as the case may be, the person under whose control he works must ensure that he performs the duty<sup>7</sup>.

The person on whose behalf the inspection was carried out must keep the report or a copy of it available for inspection by an inspector<sup>8</sup>:

- 1457 (a) at the site of the place of work<sup>9</sup> in respect of which the inspection was carried out until that work is completed; and
- 1458 (b) after that for three months,

and send to the inspector such extracts from or copies of it as the inspector may from time to time require<sup>10</sup>.

1 Nothing in the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33 requires as regards an inspection carried out on a place of work for the purposes of reg 31(4)(a)(i) (see PARA 687 head (a)(i)) and reg 32(2)(a)(i) (see PARA 688 head (a)(i)), the preparation of more than one report within a period of seven days: reg 33(5).

2 Ie under the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 31 or 32: see PARAS 687-688.

3 As to the meaning of 'construction work' see PARA 674.

4 Ie the particulars set out in the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 3. Those particulars are: (1) name and address of the person on whose behalf the inspection was carried out; (2) location of the place of work inspected; (3) description of the place of work or part of that place inspected (including any work equipment and materials); (4) date and time of the inspection; (5) details of any matter identified that could give rise to a risk to the health or safety of any person; (6) details of any action taken as a result of any matter identified in head (5) above; (7) details of any further action considered necessary; (8) name and position of the person making the report: Sch 3. As to the meaning of 'work equipment' see PARA 684 note 6.

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person

who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

<sup>6</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(2).

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(3).

8 Is an inspector appointed under the Health and Safety at Work etc Act 1974 s 19: see PARA 375.

9 As to the meaning of 'place of work' see PARA 684 note 2.

10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 33(4).

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## 690. Energy distribution installations.

Where necessary to prevent danger, energy distribution installations must be suitably located, checked and clearly indicated<sup>1</sup>. Where there is a risk from electric power cables:

- 1459 (1) they must be directed away from the area of risk; or
- 1460 (2) the power must be isolated and, where necessary, earthed; or
- 1461 (3) if it is not reasonably practicable to comply with head (1) or (2) above, suitable warning notices and:
- 304
  - 6. (a) barriers suitable for excluding work equipment<sup>2</sup> which is not needed; or
  - 7. (b) where vehicles<sup>3</sup> need to pass beneath the cables, suspended protections; or
  - 8. (c) in either case, measures providing an equivalent level of safety,
- 305
- 1462 must be provided or (in the case of measures) taken<sup>4</sup>.

No construction work<sup>5</sup> which is liable to create a risk to health or safety from an underground service, or from damage to or disturbance of it, may be carried out unless suitable and sufficient steps (including any steps required by these provisions) have been taken to prevent such risk, so far as is reasonably practicable<sup>6</sup>.

<sup>1</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 34(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

<sup>2</sup> As to the meaning of 'work equipment' see PARA 684 note 6.

<sup>3</sup> 'Vehicle' includes any mobile work equipment: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1).

<sup>4</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 34(2).

<sup>5</sup> As to the meaning of 'construction work' see PARA 674.

<sup>6</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 34(3). As to what is reasonably practicable see PARA 417.

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### **691. Prevention of drowning.**

Where in the course of construction work<sup>1</sup> any person is liable to fall into water or other liquid with a risk of drowning, suitable and sufficient steps must be taken:

- 1463 (1) to prevent, so far as is reasonably practicable<sup>2</sup>, such person from so falling;
- 1464 (2) to minimise the risk of drowning in the event of such a fall; and
- 1465 (3) to ensure that suitable rescue equipment is provided, maintained and, when necessary, used so that such person may be promptly rescued in the event of such a fall<sup>3</sup>.

Suitable and sufficient steps must be taken to ensure the safe transport of any person conveyed by water to or from any place of work<sup>4</sup>. Any vessel used to convey any person by water to or from a place of work must not be overcrowded or overloaded<sup>5</sup>.

1 As to the meaning of 'construction work' see PARA 674.

2 As to what is reasonably practicable see PARA 417.

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 35(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 35(2). As to the meaning of 'place of work' see PARA 684 note 2.

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 35(3).



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## 692. Traffic routes.

Every construction site<sup>1</sup> must be organised in such a way that, so far as is reasonably practicable<sup>2</sup>, pedestrians and vehicles<sup>3</sup> can move safely and without risks to health<sup>4</sup>. Traffic routes<sup>5</sup> must be suitable for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size<sup>6</sup>. A traffic route does not satisfy these requirements unless suitable and sufficient steps are taken to ensure that:

- 1466 (1) pedestrians or vehicles may use it without causing danger to the health or safety of persons near it;
- 1467 (2) any door or gate for pedestrians which leads onto a traffic route is sufficiently separated from that traffic route to enable pedestrians to see any approaching vehicle or plant from a place of safety;
- 1468 (3) there is sufficient separation between vehicles and pedestrians to ensure safety or, where this is not reasonably practicable:
- 306 9. (a) there are provided other means for the protection of pedestrians; and
- 10. (b) there are effective arrangements for warning any person liable to be crushed or trapped by any vehicle of its approach;
- 307 1469 (4) any loading bay has at least one exit point for the exclusive use of pedestrians; and
- 1470 (5) where it is unsafe for pedestrians to use a gate intended primarily for vehicles, one or more doors for pedestrians is provided in the immediate vicinity of the gate, is clearly marked and is kept free from obstruction<sup>7</sup>.

Every traffic route must be (i) indicated by suitable signs where necessary for reasons of health or safety; (ii) regularly checked; and (iii) properly maintained<sup>8</sup>.

No vehicle may be driven on a traffic route unless, so far as is reasonably practicable, that traffic route is free from obstruction and permits sufficient clearance<sup>9</sup>.

1 As to the meaning of 'construction site' see PARA 674 note 11.

2 As to what is reasonably practicable see PARA 417.

3 As to the meaning of 'vehicle' see PARA 690 note 3.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 36(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

5 'Traffic route' means a route for pedestrian traffic or for vehicles and includes any doorway, gateway, loading bay or ramp: Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1). 'Loading bay' means any facility for loading or unloading: reg 2(1).

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 36(2).

- 7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 36(3).
- 8 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 36(4).
- 9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 36(5).

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### **693. Vehicles.**

Suitable and sufficient steps must be taken:

- 1471 (1) to prevent or control the unintended movement of any vehicle<sup>1</sup>;
- 1472 (2) to ensure that, where any person may be endangered by the movement of any vehicle, the person having effective control of the vehicle is to give warning to any person who is liable to be at risk from the movement of the vehicle<sup>2</sup>.

Any vehicle being used for the purposes of construction work<sup>3</sup> must when being driven, operated or towed, (a) be driven, operated or towed in such a manner as is safe in the circumstances; and (b) be loaded in such a way that it can be driven, operated or towed safely<sup>4</sup>.

No person may ride or be required or permitted to ride on any vehicle being used for the purposes of construction work otherwise than in a safe place thereon provided for that purpose<sup>5</sup>. No person may remain or be required or permitted to remain on any vehicle during the loading or unloading of any loose material unless a safe place of work<sup>6</sup> is provided and maintained for such person<sup>7</sup>.

Suitable and sufficient measures must be taken so as to prevent any vehicle from falling into any excavation<sup>8</sup> or pit, or into water, or overrunning the edge of any embankment or earthwork<sup>9</sup>.

1 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13. As to the meaning of 'vehicle' see PARA 690 note 3.

2 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(2).

3 As to the meaning of 'construction work' see PARA 674.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(3).

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(4).

6 As to the meaning of 'place of work' see PARA 684 note 2.

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(5).

8 As to the meaning of 'excavation' see PARA 687 note 2.

9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 37(6).

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#### **694. Prevention of risk from fire etc; fire detection and fire-fighting.**

Suitable and sufficient steps must be taken to prevent, so far as is reasonably practicable<sup>1</sup>, the risk of injury to any person during the carrying out of construction work<sup>2</sup> arising from (1) fire or explosion; (2) flooding; or (3) any substance liable to cause asphyxiation<sup>3</sup>.

Where necessary in the interests of the health and safety of any person at work on a construction site<sup>4</sup> there must be provided suitable and sufficient fire-fighting equipment and fire detection and alarm systems, which must be suitably located<sup>5</sup>. Any fire-fighting equipment and any fire detection and alarm system so provided must be examined and tested at suitable intervals and properly maintained<sup>6</sup>. Any fire-fighting equipment which is not designed to come into use automatically must be easily accessible<sup>7</sup>. Every person at work on a construction site must, so far as is reasonably practicable<sup>8</sup>, be instructed in the correct use of any fire-fighting equipment which it may be necessary for him to use<sup>9</sup>. Where a work activity may give rise to a particular risk of fire, a person must not carry out such work unless he is suitably instructed<sup>10</sup>. Fire-fighting equipment must be indicated by suitable signs<sup>11</sup>.

<sup>1</sup> As to what is reasonably practicable see PARA 417.

<sup>2</sup> As to the meaning of 'construction work' see PARA 674.

<sup>3</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 38. As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13. In England and Wales the enforcing authority within the meaning of the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 25 (see PARA 660 note 34), is the enforcing authority in respect of a construction site which is contained within, or forms part of, premises which are occupied by persons other than those carrying out the construction work or any activity arising from such work as regards the Construction (Design and Management) Regulations 2007, SI 2007/320, regs 39 and 40 (see PARA 695), in so far as those regulations relate to fire, and reg 41 (see the text to notes 4-11) (reg 46(1)), but this only applies in respect of premises to which the 2005 order applies (Construction (Design and Management) Regulations 2007, SI 2007/320, reg 46(2)).

<sup>4</sup> As to the meaning of 'construction site' see PARA 674 note 11.

<sup>5</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(1). In making provision under reg 41(1), account must be taken of the matters in reg 39(2) (see PARA 695 heads (1)-(5)): reg 41(2).

<sup>6</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(3).

<sup>7</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(4).

<sup>8</sup> As to what is reasonably practicable see PARA 417.

<sup>9</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(5).

<sup>10</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(6).

<sup>11</sup> Construction (Design and Management) Regulations 2007, SI 2007/320, reg 41(7).

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#### **695. Emergency routes and exits; emergency procedures.**

Where necessary in the interests of the health and safety of any person on a construction site<sup>1</sup>, a sufficient number of suitable emergency routes and exits must be provided to enable any person to reach a place of safety quickly in the event of danger<sup>2</sup>. An emergency route or exit so provided must lead as directly as possible to an identified safe area<sup>3</sup>. Any emergency route or exit so provided, and any traffic route<sup>4</sup> giving access thereto, must be kept clear and free from obstruction and, where necessary, provided with emergency lighting so that such emergency route or exit may be used at any time<sup>5</sup>. All emergency routes or exits must be indicated by suitable signs<sup>6</sup>.

Where necessary in the interests of the health and safety of any person on a construction site, there must be prepared and, where necessary, implemented suitable and sufficient arrangements for dealing with any foreseeable emergency, which arrangements must include procedures for any necessary evacuation of the site or any part thereof<sup>7</sup>. In making such arrangements, account must be taken of:

- 1473 (1) the type of work for which the construction site is being used;
- 1474 (2) the characteristics and size of the construction site and the number and location of places of work<sup>8</sup> on that site;
- 1475 (3) the work equipment<sup>9</sup> being used;
- 1476 (4) the number of persons likely to be present on the site at any one time; and
- 1477 (5) the physical and chemical properties of any substances or materials on or likely to be on the site<sup>10</sup>.

Where such arrangements are prepared, suitable and sufficient steps must be taken to ensure that:

- 1478 (a) every person to whom the arrangements extend is familiar with those arrangements; and
- 1479 (b) the arrangements are tested by being put into effect at suitable intervals<sup>11</sup>.

1 As to the meaning of 'construction site' see PARA 674 note 11.

2 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 40(1). As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13. As to the enforcing authority for these purposes see PARA 694 note 3. In making provision under reg 40(1), account must be taken of the matters in reg 39(2) (see heads (1)-(5) in the text): reg 40(4).

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 40(2).

4 As to the meaning of 'traffic route' see PARA 692 note 5.

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 40(3).

6 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 40(5).

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 39(1).

- 8 As to the meaning of 'place of work' see PARA 684 note 2.
- 9 As to the meaning of 'work equipment' see PARA 684 note 6.
- 10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 39(2).
- 11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 39(3).

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#### **696. Fresh air, temperature, weather protection and lighting.**

Suitable and sufficient steps must be taken to ensure, so far as is reasonably practicable<sup>1</sup>, that every place of work<sup>2</sup> or approach thereto has sufficient fresh or purified air to ensure that the place or approach is safe and without risks to health<sup>3</sup>. Any plant used for the purpose of complying with this requirement must, where necessary for reasons of health or safety, include an effective device to give visible or audible warning of any failure of the plant<sup>4</sup>.

Suitable and sufficient steps must be taken to ensure, so far as is reasonably practicable, that during working hours the temperature at any place of work indoors is reasonable having regard to the purpose for which that place is used<sup>5</sup>. Every place of work outdoors must, where necessary to ensure the health and safety of persons at work there, be so arranged that, so far as is reasonably practicable and having regard to the purpose for which that place is used and any protective clothing or work equipment<sup>6</sup> provided for the use of any person at work there, it provides protection from adverse weather<sup>7</sup>.

Every place of work and approach thereto and every traffic route<sup>8</sup> must be provided with suitable and sufficient lighting, which must be, so far as is reasonably practicable, by natural light<sup>9</sup>. The colour of any artificial lighting provided must not adversely affect or change the perception of any sign or signal provided for the purposes of health and safety<sup>10</sup>. Without prejudice to the requirement to provide suitable and sufficient lighting, suitable and sufficient secondary lighting must be provided in any place where there would be a risk to the health or safety of any person in the event of failure of primary artificial lighting<sup>11</sup>.

1 As to what is reasonably practicable see PARA 417.

2 As to the meaning of 'place of work' see para 684 note 2.

3 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 42(1). As to the application of the 2007 regulations see para 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and para 674 text and notes 12-13.

4 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 42(2).

5 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 43(1).

6 As to the meaning of 'work equipment' see para 684 note 6.

7 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 43(2).

8 As to the meaning of 'traffic route' see para 692 note 5.

9 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 44(1).

10 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 44(2).

11 Construction (Design and Management) Regulations 2007, SI 2007/320, reg 44(3).

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### **697. Welfare facilities.**

The client<sup>1</sup>, the contractor<sup>2</sup> and the principal contractor<sup>3</sup> all have a duty to ensure that the requirements of the Construction (Design and Management) Regulations 2007<sup>4</sup> as to welfare facilities are complied with. Those requirements are as follows<sup>5</sup>.

Suitable and sufficient sanitary conveniences must be provided or made available at readily accessible places and, so far as is reasonably practicable<sup>6</sup>, rooms containing sanitary conveniences must be adequately ventilated and lit<sup>7</sup>.

Suitable and sufficient washing facilities, including showers if required by the nature of the work or for health reasons, must so far as is reasonably practicable be provided or made available at readily accessible places<sup>8</sup>.

An adequate supply of wholesome drinking water must be provided or made available at readily accessible and suitable places<sup>9</sup>.

Suitable and sufficient changing rooms, being separate rooms for, or separate use of rooms by, men and women where necessary for reasons of propriety, must be provided or made available at readily accessible places if a worker has to wear special clothing for the purposes of his work and he cannot, for reasons of health or propriety, be expected to change elsewhere<sup>10</sup>. Suitable and sufficient facilities must, where necessary, be provided or made available at readily accessible places to enable persons to lock away any such special clothing which is not taken home, their own clothing which is not worn during working hours and their personal effects<sup>11</sup>.

Suitable and sufficient rest rooms or rest areas must be provided or made available at readily accessible places<sup>12</sup>.

1 See the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 9(1)(b); and PARA 675 head (2). As to the meaning of 'client' see PARA 674 note 3.

2 See the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 13(7); and PARA 675 text to notes 41-42. As to the meaning of 'contractor' see PARA 674 note 18.

3 See the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 22(1)(c); and PARA 681 head (3). As to the meaning of 'principal contractor' see PARA 674 note 17.

4 See the requirements of the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2.

5 See the Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2. As to the application of the 2007 regulations see PARA 674. Breach of a duty imposed by the provisions discussed in this paragraph confers a right of action in civil proceedings even in so far as that duty applies for the protection of a person who is not an employee of the person on whom the duty is placed: see reg 45; and PARA 674 text and notes 12-13.

6 As to what is reasonably practicable see PARA 417.

7 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 1. So far as is reasonably practicable, sanitary conveniences and the rooms containing them must be kept in a clean and orderly condition: Sch 2 para 2. Separate rooms containing sanitary conveniences must be provided for men and women, except where and so far as each convenience is in a separate room, the door of which is capable of being secured from the inside: Sch 2 para 3.



8 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 4. Washing facilities must be provided (1) in the immediate vicinity of every sanitary convenience, whether or not provided elsewhere; and (2) in the vicinity of any changing rooms required by Sch 2 para 14 whether or not provided elsewhere: Sch 2 para 5. Washing facilities must include (a) a supply of clean hot and cold, or warm, water (which must be running water so far as is reasonably practicable); (b) soap or other suitable means of cleaning; and (c) towels or other suitable means of drying: Sch 2 para 6. Rooms containing washing facilities must be sufficiently ventilated and lit: Sch 2 para 7. Washing facilities and the rooms containing them must be kept in a clean and orderly condition: Sch 2 para 8. Separate washing facilities must be provided for men and women, except where and so far as they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time (Sch 2 para 9), but this does not apply to facilities which are provided for washing hands, forearms and face only (Sch 2 para 10).

9 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 11. Every supply of drinking water must be conspicuously marked by an appropriate sign where necessary for reasons of health and safety: Sch 2 para 12. Where a supply of drinking water is provided, there must also be provided a sufficient number of suitable cups or other drinking vessels unless the supply of drinking water is in a jet from which persons can drink easily: Sch 2 para 13.

10 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 14(1). Changing rooms must (1) be provided with seating; and (2) include, where necessary, facilities to enable a person to dry any such special clothing and his own clothing and personal effects: Sch 2 para 14(2).

11 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 14(3).

12 Construction (Design and Management) Regulations 2007, SI 2007/320, Sch 2 para 15(1). Rest rooms and rest areas must (1) include suitable arrangements to protect non-smokers from discomfort caused by tobacco smoke; (2) be equipped with an adequate number of tables and adequate seating with backs for the number of persons at work likely to use them at any one time; (3) where necessary, include suitable facilities for any person at work who is a pregnant woman or nursing mother to rest lying down; (4) include suitable arrangements to ensure that meals can be prepared and eaten; (5) include the means for boiling water; and (6) be maintained at an appropriate temperature: Sch 2 para 15(2).

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#### **(iv) Head Protection**

##### **698. Duties in relation to head protection.**

Every employer must provide each of his employees who is at work on operations or works to which the Construction (Head Protection) Regulations 1989<sup>1</sup> apply<sup>2</sup> with suitable head protection<sup>3</sup> and must maintain it and replace it whenever necessary<sup>4</sup>. Every self-employed person<sup>5</sup> who is at work on operations or works to which those regulations apply must provide himself with suitable head protection and must maintain it and replace it whenever necessary<sup>6</sup>.

Any head protection so provided must comply with any enactment which implements any provision on design or manufacture with respect to health and safety in any relevant European Community directive<sup>7</sup>. Before choosing head protection an employer or self-employed person must make an assessment to determine whether it is suitable<sup>8</sup>. Such assessment must involve the definition of the characteristics which head protection must have in order to be suitable, and a comparison between the characteristics of the protection available and those required for suitable head protection<sup>9</sup>. The assessment must be reviewed if there is reason to suspect that it is no longer valid or there has been a significant change in the work to which it relates, and where, as a result of such review, changes in the assessment are required, the employer or self-employed person must make them<sup>10</sup>. Every employer and self-employed person must ensure that appropriate accommodation is available for head protection provided under the regulations when it is not in use<sup>11</sup>.

Every employer must ensure, so far as is reasonably practicable<sup>12</sup>, that each of his employees who is at work on operations or works to which the regulations apply wears suitable head protection, unless there is no foreseeable risk of injury to his head other than by his falling<sup>13</sup>, and may, so far as is necessary to comply with this obligation, give directions requiring his employees to wear suitable head protection<sup>14</sup>.

Every employer, self-employed person or employee who has control over any other person who is at work on such operations or works must ensure so far as is reasonably practicable that each such other person wears suitable head protection, unless there is no foreseeable risk of injury to that other person's head other than by his falling<sup>15</sup>, and where he has control over any self-employed person may, so far as is necessary to comply with this obligation, give directions requiring each such other self-employed person to wear suitable head protection<sup>16</sup>.

The person for the time being having control of a site where such operations or works are being carried out may make rules regulating the wearing of suitable head protection on that site by persons at work on those operations or works<sup>17</sup>. Such rules must be in writing and must be brought to the notice of persons who may be affected by them<sup>18</sup>.

Every employee who has been provided with suitable head protection must wear that head protection<sup>19</sup>, and every self-employed person must wear suitable head protection<sup>20</sup>, when required to do so by rules made or directions under the provisions set out above<sup>21</sup>.

Every self-employed person who is at work on operations or works to which the regulations apply, but who is not under the control of another employer or self-employed person or of an employee, must wear suitable head protection unless there is no foreseeable risk of injury to his head other than by his falling<sup>22</sup>.

Every employee or self-employed person who is required to wear suitable head protection by or under the regulations must make full and proper use of it and take all reasonable steps to return it to the accommodation provided for it after use<sup>23</sup>.

Every employee who has been provided with suitable head protection by his employer must take reasonable care of it and must forthwith report to his employer any loss of, or obvious defect in, that head protection<sup>24</sup>.

Exemption of any person or class of persons or any activity or class of activities from any requirement imposed by the regulations may be granted by the Health and Safety Executive by a certificate in writing, and any such exemption may be granted subject to conditions and to a limit of time, and may be revoked by a certificate in writing at any time<sup>25</sup>, provided that no such exemption may be granted unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which the Executive proposes to attach to the exemption, and any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it, and that any provision imposed by the European Union in respect of the encouragement of improvements in the safety and health of workers at work will be satisfied<sup>26</sup>. Additionally, there is a statutory exemption from any requirement for a Sikh<sup>27</sup> who is on a construction site<sup>28</sup> to wear a safety helmet<sup>29</sup> at any time when he is wearing a turban<sup>30</sup>.

1     le the Construction (Head Protection) Regulations 1989, SI 1989/2209, which came into force on 30 March 1990 (reg 1).

2     The regulations apply to construction work within the meaning of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674), but not to a diving project within the meaning of the Diving at Work Regulations 1997, SI 1997/2776, reg 2(1) (see PARA 591): Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 2 (amended by SI 1997/2776; and by virtue of SI 2007/320). The 1989 regulations apply to any activity to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305), as they apply to any such activity within Great Britain: Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 8; Interpretation Act 1978 s 17(2).

3     'Suitable head protection' means head protection which (1) is designed to provide protection, so far as is reasonably practicable, against foreseeable risks of injury to the head to which the wearer may be exposed; (2) after any necessary adjustment, fits the wearer; and (3) is suitable having regard to the work or activity in which the wearer may be engaged: Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 1(2).

4     Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(1).

5     As to the meaning of 'self-employed person' see PARA 302 note 5.

6     Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(2).

7     Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(3) (reg 3(3)-(5) added by SI 1992/2996). The relevant Community directives are listed in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2996, Sch 1: see PARA 523 note 2.

8     Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(4) (as added: see note 7).

9     Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(5) (as added: see note 7).

10    Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(6) (as added: see note 7).

11    Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 3(7) (as added: see note 7).

12    As to what is reasonably practicable see PARA 417.

13    Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 4(1).

14    Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 5(3).

15    Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 4(2).

- 16 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 5(4).
- 17 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 5(1).
- 18 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 5(2).
- 19 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 6(1).
- 20 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 6(2).
- 21 le under the Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 5: see the text and notes 14, 16-18: reg 6(1), (2).
- 22 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 6(3).
- 23 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 6(4) (substituted by SI 1992/2996). As to the accommodation which must be provided for head protection see the text and note 11.
- 24 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 7.
- 25 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 9(1). As to the Health and Safety Executive see PARA 361 et seq.
- 26 Construction (Head Protection) Regulations 1989, SI 1989/2209, reg 9(2) (amended by SI 1992/2996).
- 27 For these purposes, any reference to a Sikh is a reference to a follower of the Sikh religion: Employment Act 1989 s 11(8)(a).
- 28 For these purposes, any reference to a Sikh being on a construction site is a reference to his being there whether while at work or otherwise: Employment Act 1989 s 11(8)(b). 'Construction site' means any place where any building operations or works of engineering construction (within the meaning of the Factories Act 1961: see PARA 315 note 1) are being undertaken: Employment Act 1989 s 11(7).
- 29 'Safety helmet' means any form of protective headgear: Employment Act 1989 s 11(7).
- 30 See the Employment Act 1989 s 11(1)-(3). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 480.

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## **(v) Work in Compressed Air**

### **699. Appointment of compressed air contractor.**

The principal contractor<sup>1</sup> for any project which includes work in compressed air<sup>2</sup> must appoint as the compressed air contractor<sup>3</sup> in respect of the work in compressed air included in that project a contractor competent to execute or to supervise the execution of such work<sup>4</sup>. Nothing in this provision, however, prevents the appointment of the principal contractor himself as the compressed air contractor provided he is competent to perform the relevant functions imposed by the Work in Compressed Air Regulations 1996<sup>5</sup>.

The Health and Safety Executive<sup>6</sup> may, by a certificate in writing, exempt any person or class of persons from all or any of the requirements or prohibitions imposed by the 1996 regulations, and any such exemption may be granted subject to conditions and to a time limit, and may be revoked by a certificate in writing at any time<sup>7</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances and in particular to the conditions, if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>8</sup>.

1 For these purposes, 'principal contractor' and 'contractor' have the meanings assigned to them by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674 notes 17, 18): Work in Compressed Air Regulations 1996, SI 1996/1656, reg 5(3) (amended by SI 2007/320).

2 For these purposes, 'project' means a project which includes work in compressed air; 'work in compressed air' means work within any working chamber, airlock or decompression chamber which (in each case) is used for the compression or decompression of persons, including a medical lock used solely for treatment purposes, the pressure of which exceeds 0.15 bar; and 'working chamber' means an enclosed space in which work is carried out and which is accessible only through an airlock: Work in Compressed Air Regulations 1996, SI 1996/1656, reg 2(1). 'Airlock' means an enclosed space capable of being pressurised and which is used for the compression or decompression of any person or any material when such person or material is passing into or, as the case may be, out of a working chamber (reg 2(1)); and any reference to pressure in bar means that pressure above the surrounding atmospheric pressure (reg 2(2)).

The 1996 regulations apply to and in relation to work in compressed air which is construction work within the meaning of the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1) (see PARA 674) and which is carried out in the course of a project which is notifiable within the meaning of reg 2(3) (see PARA 674 note 8); but do not apply to any diving project within the meaning of the Diving at Work Regulations 1997, SI 1997/2776, reg 2(1) (see PARA 591): Work in Compressed Air Regulations 1996, SI 1996/1656, reg 3(1), (2) (amended by SI 1997/2776 and SI 2007/320).

3 'Compressed air contractor' means a contractor appointed under the Work in Compressed Air Regulations 1996, SI 1996/1656, reg 5: reg 2(1).

4 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 5(1).

5 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 5(2).

6 As to the Health and Safety Executive see PARA 361 et seq.

7 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 21(1).

8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 21(2).

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## 700. Notifications.

Subject to the following provision, the compressed air contractor<sup>1</sup> must ensure that no person works in compressed air unless the compressed air contractor has given notice of the work in compressed air<sup>2</sup> to the Health and Safety Executive<sup>3</sup> at least 14 days before the work is to commence<sup>4</sup>. Where, however, owing to an emergency or to circumstances which could not reasonably have been foreseen it is not practicable to comply with the requirement that notice of work in compressed air be given at least 14 days before that work is due to commence, such notice must be given as soon as is practicable after the necessity for such work becomes known to the compressed air contractor and, in any event, before such work commences<sup>5</sup>.

The compressed air contractor must also ensure that no person works in compressed air unless notice of the work in compressed air has been given<sup>6</sup> to any relevant hospital<sup>7</sup>, to local ambulance and fire services and to any other establishment in the vicinity which has an operable medical lock<sup>8</sup>. Where notice of work in compressed air has been so given, the compressed air contractor must ensure that every body to whom such notice has been given is informed without delay of the completion or suspension of that work<sup>9</sup>.

1 As to the meaning of 'compressed air contractor' see PARA 699 note 3.

2 As to the meaning of 'work in compressed air' see PARA 699 note 2.

3 The notice under the Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(4). That notice must be in writing and must contain the information set out in Sch 1: reg 6(4). That information is: (1) the fact that work in compressed air is being undertaken; (2) the location of the site of the work in compressed air; (3) the date of the commencement and the planned date of completion of the work in compressed air; (4) the name of the compressed air contractor and a 24 hour contact telephone number (or numbers) of that contractor; (5) the name, address and telephone number of the contract medical adviser; (6) the intended maximum pressure at which the work in compressed air is to be undertaken; (7) the planned pattern of the work in compressed air to be undertaken including details, where applicable, of shift and weekend working; (8) the number of workers likely to be working in compressed air in each shift: Sch 1 paras 1-8. 'Contract medical adviser' means a registered medical practitioner appointed under reg 9(1) (see PARA 702) and who is competent to give the advice referred to in reg 9(1): reg 2(1).

4 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(1). As to the application of the 1996 regulations see PARA 699. Any duty imposed upon a compressed air contractor under those regulations is a duty in relation to the work in compressed air in respect of which that compressed air contractor has been so appointed: reg 4(1).

5 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(2).

6 The under the Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(4): see note 3.

7 For these purposes, 'relevant hospital' means a hospital with an accident and emergency unit to which any person suffering from any acute condition arising from the work in compressed air is likely to be taken: Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(6).

8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(3).

9 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 6(5).

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# **701. Safe system of work; plant and equipment.**

The compressed air contractor<sup>1</sup> must ensure:

- 1480 (1) that no person works in compressed air or enters or leaves compressed air except in accordance with a system of work which, so far as is reasonably practicable<sup>2</sup>, is safe and without risks to health<sup>3</sup>;
- 1481 (2) that a sufficient number of competent persons are present on site to supervise the execution of work in compressed air<sup>4</sup> at all times when such work is being carried out and, in the case of such work undertaken at a pressure of 0.7 bar or above<sup>5</sup>, for 24 hours thereafter<sup>6</sup>;
- 1482 (3) that there is available for immediate use all plant and ancillary equipment which is necessary for the conduct of work in compressed air in a manner which is, so far as is reasonably practicable, safe and without risks to health and that, where necessary, all such plant and equipment is used<sup>7</sup>;
- 1483 (4) that, so far as is reasonably practicable:  
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  - 11. (a) all plant and ancillary equipment used for the purpose of carrying out work in compressed air is of appropriate design and construction and of sufficient capacity for that purpose;
  - 12. (b) all plant and ancillary equipment used for the purpose of carrying out work in compressed air is safe and without risks to health and is maintained in such a condition as to ensure that it remains safe and without risks to health at all times when it is being used; and
  - 13. (c) all plant and ancillary equipment used for the purpose of carrying out work in compressed air and which is to contain air at a pressure in excess of 0.15 bar is examined and tested by a competent person and rectified of any faults before work in compressed air commences and re-examined and re-tested after any modification or alteration which has the potential to affect the safety of that plant or equipment<sup>8</sup>.

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1 As to the meaning of 'compressed air contractor' see PARA 699 note 3; and as to duties imposed on such a contractor see PARA 700 note 4.

2 As to what is reasonably practicable see PARA 417.

3 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 7(1). As to the application of the 1996 regulations see PARA 699.

4 As to the meaning of 'work in compressed air' see PARA 699 note 2.

5 As to pressure in bar see PARA 699 note 2.

6 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 7(2).

7 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 8(1).

8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 8(2).





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## **702. Appointment of contract medical adviser; medical surveillance and treatment.**

The compressed air contractor<sup>1</sup> must appoint a contract medical adviser<sup>2</sup> to give advice to him on all aspects of health relevant to the work in compressed air<sup>3</sup> undertaken<sup>4</sup>; but nothing in this provision prevents the appointment of an appointed doctor<sup>5</sup> to be the contract medical adviser<sup>6</sup>.

Every employer must ensure that each of his employees<sup>7</sup> who works in compressed air is under adequate medical surveillance by an appointed doctor or employment medical adviser<sup>8</sup>; and where an employee is to be assigned to work in compressed air, the medical surveillance must be commenced before he is so assigned<sup>9</sup>. That medical surveillance must include examinations at such suitable intervals as the appointed doctor or employment medical adviser may require having regard to the pressure to which the employee has been or will be subjected in the course of work in compressed air and, in any event, at intervals of not more than 12 months<sup>10</sup>.

The employer must ensure that:

- 1484 (1) a health record, containing particulars approved by the Health and Safety Executive, is made and maintained in respect of each of his employees who is engaged in work in compressed air; and
- 1485 (2) the record or a copy of it is kept in a suitable form for at least 40 years from the date of the last entry made in it; and
- 1486 (3) as soon as is reasonably practicable<sup>11</sup> after an employee of his has ceased to work on any project, a copy of the relevant part or parts of the record made under head (1) above is provided to that employee<sup>12</sup>.

Where an appointed doctor or employment medical adviser has certified in the health record of any employee that, in the professional opinion of the appointed doctor or employment medical adviser, the employee should not be engaged in work in compressed air or that he should only be so engaged under conditions specified in the record, the employer may not permit the employee to be engaged in work in compressed air except in accordance with the conditions, if any, specified in the health record unless that entry has been cancelled by an appointed doctor or employment medical adviser<sup>13</sup>.

Where an employee is subject to medical surveillance in accordance with the above provisions and an appointed doctor or employment medical adviser has certified by an entry in his health record that medical surveillance should be continued after his work in compressed air has ceased, the employer must ensure that the medical surveillance of that employee is continued in accordance with that entry while he is employed by the employer unless that entry has been cancelled by an appointed doctor or employment medical adviser<sup>14</sup>.

Every employee who is or who has been engaged in or who is to be assigned to work in compressed air must:

- 1487 (a) when required by his employer and at the cost of his employer, present himself during his working hours, or such other time as may be agreed by that employee, for such medical surveillance procedures as may be required for these purposes; and

- 1488 (b) furnish the appointed doctor or employment medical adviser with such information concerning his health as the appointed doctor or employment medical adviser may reasonably require<sup>15</sup>.

Every compressed air contractor must ensure that adequate facilities are provided and maintained for the treatment of persons working in compressed air and for the treatment of persons who have worked in compressed air within the preceding 24 hours<sup>16</sup>. In the case of work undertaken at a pressure of 0.7 bar or above<sup>17</sup>, those facilities must include:

- 1489 (i) a medical lock;  
 1490 (ii) a person competent to operate that lock; and  
 1491 (iii) a person, whether the same or in addition to the person referred to in head (ii) above, competent to provide medical assistance in respect of any condition arising from such work<sup>18</sup>;

and in the case of work undertaken at a pressure of 1.0 bar or above, those facilities must include a medical lock and the presence of a person competent both to operate that lock and to provide medical assistance in respect of any condition arising from such work, and that person must be employed specifically for such purposes<sup>19</sup>.

1 As to the meaning of 'compressed air contractor' see PARA 699 note 3; and as to duties imposed on such a contractor see PARA 700 note 4.

2 As to the meaning of 'contract medical adviser' see PARA 700 note 3.

3 As to the meaning of 'work in compressed air' see PARA 699 note 2.

4 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 9(1). As to the application of the 1996 regulations see PARA 699.

5 'Appointed doctor' means a registered medical practitioner appointed for the time being in writing by the Health and Safety Executive for the purposes of the 1996 regulations: Work in Compressed Air Regulations 1996, SI 1996/1656, reg 2(1). As to the Health and Safety Executive see PARA 361 et seq.

6 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 9(2).

7 As to the meaning of 'employee' see PARA 302 note 4.

8 'Employment medical adviser' means an employment medical adviser appointed under the Health and Safety at Work etc Act 1974 s 56 (see PARA 384): Work in Compressed Air Regulations 1996, SI 1996/1656, reg 2(1).

9 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(1). Regulation 10 (other than reg 10(3)(c), (6)(a)) applies to a self-employed person as it applies to an employer and an employee as if that self-employed person was both an employer and his own employee: reg 4(2). As to the meaning of 'self-employed person' see PARA 302 note 5.

10 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(2).

11 As to what is reasonably practicable see PARA 417.

12 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(3).

13 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(4).

14 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(5).

15 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 10(6).

16 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 12(1).

- 17 As to pressure in bar see PARA 699 note 2.
- 18 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 12(2).
- 19 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 12(3).

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### **703. Compression and decompression procedures.**

The compressed air contractor<sup>1</sup> must ensure:

- 1492 (1) that compression or decompression of any person engaged in work in compressed air<sup>2</sup> is carried out in accordance with any procedures approved by the Health and Safety Executive<sup>3</sup>;
- 1493 (2) that no person is to be subjected to a pressure exceeding 3.5 bar<sup>4</sup> except in an unforeseen emergency<sup>5</sup>;
- 1494 (3) that no person is to be subjected to the procedure of decanting<sup>6</sup> except in an emergency<sup>7</sup>;
- 1495 (4) that an adequate record of exposure is made and maintained in respect of the times and pressures at which work in compressed air is undertaken and that the record or a copy of it is kept in a suitable form for at least 40 years from the date of the last entry made in it<sup>8</sup>;
- 1496 (5) that an individual record of exposure containing the specified information<sup>9</sup> is made and maintained in respect of each person who undertakes work in compressed air and that the record or a copy of it is kept in a suitable form for at least 40 years from the date of the last entry made in it<sup>10</sup>;
- 1497 (6) that, as soon as is reasonably practicable<sup>11</sup> after a person has ceased to work on any project, the employer of that person is provided with a copy of such part or parts of the record made pursuant to head (4) above as relate to that person<sup>12</sup> and that person is provided with a copy of such part or parts of the record made pursuant to head (5) above as relate to him<sup>13</sup>.

1 As to the meaning of 'compressed air contractor' see PARA 699 note 3; and as to duties imposed on such a contractor see PARA 700 note 4.

2 As to the meaning of 'work in compressed air' see PARA 699 note 2.

3 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(1). 'Approved' means approved for the time being in writing for the purposes of the 1996 regulations: reg 2(1). As to the application of the 1996 regulations see PARA 699; and as to the Health and Safety Executive see PARA 361 et seq.

4 As to pressure in bar see PARA 699 note 2.

5 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(2).

6 'Decanting' means the rapid decompression in an airlock to atmospheric pressure followed promptly by rapid compression in an alternative airlock and subsequent decompression to atmospheric pressure: Work in Compressed Air Regulations 1996, SI 1996/1656, reg 2(1). As to the meaning of 'airlock' see PARA 699 note 2.

7 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(3).

8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(4).

9 The record referred to in the Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(5) must contain the date, time of entry, duration and maximum pressure of each exposure and decompression details of each exposure to which the person to whom the record relates is subjected: reg 11(6).

10 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(5).

11 As to what is reasonably practicable see PARA 417.

12 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(7)(a). An employer who is provided with a copy of a record pursuant to reg 11(7) must ensure that the record or a copy of it is kept in a suitable form for at least 40 years from the date of the last entry made in it: reg 11(8). Regulation 11(7)(a), (8) applies to a self-employed person as it applies to an employer and an employee as if that self-employed person was both an employer and his own employee: reg 4(2). As to the meanings of 'employee' and 'self-employed person' see PARA 302 notes 4-5.

13 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 11(7)(b).

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#### **704. Emergencies and precautions against fire.**

The compressed air contractor<sup>1</sup> must ensure that no person works in compressed air unless there are suitable and sufficient arrangements for action to be taken in the event of an emergency<sup>2</sup>.

The compressed air contractor must also ensure that there is provided in respect of work in compressed air<sup>3</sup> any means for fighting fire required pursuant to the relevant regulations<sup>4</sup> and that any airlock or working chamber<sup>5</sup> is operated and maintained in such a manner as to minimise the risk of fire<sup>6</sup>.

No person must smoke or have with him any materials for the purpose of smoking when in compressed air<sup>7</sup>; and the compressed air contractor must ensure compliance with the prohibition<sup>8</sup>.

1 As to the meaning of 'compressed air contractor' see PARA 699 note 3; and as to duties imposed on such a contractor see PARA 700 note 4.

2 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 13(1). As to the application of the 1996 regulations see PARA 699.

Without prejudice to the generality of reg 13(1), the arrangements so required are to extend to (1) arrangements for ensuring that the requirements of the Construction (Health, Safety and Welfare) Regulations 2007, SI 2007/320, regs 39, 40, 44(3) (see PARAS 695, 696) are complied with; (2) the provision and maintenance of a sufficient number of suitable means of access; (3) the provision and maintenance of suitable means of raising the alarm; and (4) where an airlock is required for the purpose of putting into operation an evacuation pursuant to reg 39(1) (see PARA 695), the maintenance of that airlock in such a condition as to be fit to receive persons in the event of an emergency having regard, in particular, to the air supply to and the temperature of that airlock: Work in Compressed Air Regulations 1996, SI 1996/1656, reg 13(2) (amended by SI 2007/320). As to the meaning of 'airlock' see PARA 699 note 2.

3 As to the meaning of 'work in compressed air' see PARA 699 note 2.

4 I.e. pursuant to the Construction (Health, Safety and Welfare) Regulations 2007, SI 2007/320, reg 41: see PARA 694.

5 As to the meaning of 'working chamber' see PARA 699 note 2.

6 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 14(1) (amended by SI 2007/320).

7 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 14(2).

8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 14(3). In any proceedings for an offence consisting of a contravention of reg 14(3) it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence: reg 20. As to offences and penalties see PARA 852 et seq.

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## **705. Miscellaneous health, safety and welfare provisions.**

The compressed air contractor<sup>1</sup> must ensure that adequate information, instruction and training has been given to any person who works in compressed air so that he is aware of the risks arising from such work and the precautions which should be observed<sup>2</sup>. He must also ensure, so far as is reasonably practicable<sup>3</sup>, that every person who works in compressed air is under adequate medical surveillance and works only in accordance with the conditions, if any, specified in his health record<sup>4</sup>; and notwithstanding this requirement, he must ensure that no person works in compressed air where the compressed air contractor has reason to believe that person to be subject to any medical or physical condition which is likely to render that person unfit or unsuitable for such work<sup>5</sup>.

A person engaged in work in compressed air<sup>6</sup> must report forthwith any medical or physical condition which he has reason to believe is likely to render him unfit or unsuitable for such work to the compressed air contractor and, in the case of an employee<sup>7</sup>, to the employer<sup>8</sup>.

The compressed air contractor must ensure that no person works in compressed air where the compressed air contractor has reason to believe that person to be under the influence of drink or a drug to such an extent that his capacity to carry out any task for which he is responsible is impaired<sup>9</sup>.

No person must consume alcohol or have with him any alcoholic drink when in compressed air<sup>10</sup>; and the compressed air contractor must ensure compliance with this prohibition<sup>11</sup>.

The compressed air contractor must ensure that there are provided and maintained for the use of any person engaged in work in compressed air:

- 1498 (1) the required welfare facilities<sup>12</sup>;
- 1499 (2) suitable drinks for consumption during or after decompression;
- 1500 (3) suitable food and drinks for consumption by any person receiving therapeutic recompression or decompression; and
- 1501 (4) adequate and suitable facilities for remaining on the site after decompression<sup>13</sup>.

Every compressed air contractor must ensure that any person who works in compressed air at a pressure of 0.7 bar<sup>14</sup> or above is supplied with a suitable and suitably worded badge, label or other similar device for the guidance of others should that employee be taken ill after leaving work and that the badge, label or device, as the case may be, contains such particulars as may be approved by the Health and Safety Executive<sup>15</sup>. Every person to whom a badge, label or other device has been so supplied must wear that badge, label or device for 24 hours after leaving work in compressed air<sup>16</sup>.

1 As to the meaning of 'compressed air contractor' see PARA 699 note 3; and as to duties imposed on such a contractor see PARA 700 note 4.

2 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 15. As to the application of the 1996 regulations see PARA 699.

3 As to what is reasonably practicable see PARA 417.



- 4 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 16(1).
- 5 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 16(2).
- 6 As to the meaning of 'work in compressed air' see PARA 699 note 2.
- 7 As to the meaning of 'employee' see PARA 302 note 4.
- 8 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 16(3).
- 9 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 17(1).
- 10 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 17(2).
- 11 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 17(3). In any proceedings for an offence consisting of a contravention of reg 17(3) it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence: reg 20. As to offences see PARA 852 et seq.
- 12 In such facilities as are required by the Construction (Health, Safety and Welfare) Regulations 2007, SI 2007/320, Sch 2: see PARA 697.
- 13 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 18 (amended by SI 2007/320).
- 14 As to pressure in bar see PARA 699 note 2.
- 15 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 19(1). As to the meaning of 'approved' see PARA 703 note 3; and as to the Health and Safety Executive see PARA 361 et seq.
- 16 Work in Compressed Air Regulations 1996, SI 1996/1656, reg 19(2).

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## **(2) DOCKS, WHARVES ETC**

### **(i) Loading and Unloading at Docks, Wharves etc**

#### **706. Docks regulations.**

Special regulations apply to dock operations<sup>1</sup>, namely:

- 1502 (1) the process of loading or unloading goods<sup>2</sup> on or from a ship<sup>3</sup> at dock premises<sup>4</sup>;
- 1503 (2) the process of the embarking or disembarking of passengers on or from a ship at dock premises; and
- 1504 (3) any activity incidental to those processes which takes place on dock premises, including:
  - 310 14. (a) the fuelling and provisioning of a ship;
  - 15. (b) the mooring of a ship;
  - 16. (c) the storing, sorting, inspecting, checking, weighing or handling of goods;
  - 17. (d) the movement of goods, passengers or vehicles;
  - 18. (e) the use of welfare amenities<sup>5</sup> in relation to the carrying out of the activities referred to in heads (1), (2) and (3)(a) to (d) above;
  - 19. (f) attending dock premises for the purposes of the activities referred to in heads (1), (2) and (3)(a) to (e) above; or
- 311 1505 (4) the embarking or disembarking on or from a ship of its crew at dock premises<sup>6</sup>.

The regulations impose duties, extending only to matters within his control, on every employer, self-employed person<sup>7</sup> and any other person subject to a duty<sup>8</sup> under the Health and Safety at Work etc Act 1974<sup>9</sup>. They do not impose duties on the master or crew of a ship or on any person employing such persons, in relation to plant which remains on board the ship and any dock operation carried out on the ship solely by the master and crew of the ship<sup>10</sup>.

The regulations provide that dock operations must be planned and executed in such a manner as to ensure, so far as is reasonably practicable<sup>11</sup>, that no person will be exposed to danger<sup>12</sup>.

The Health and Safety Executive<sup>13</sup> may by certificate in writing exempt any person or class of persons, or activity or class of activities, to which the regulations apply from any requirement or prohibition imposed by the regulations. Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time<sup>14</sup>.

Exemption from the requirements or prohibitions imposed by the regulations may be conferred, in the interests of national security, by the Secretary of State for Defence by a certificate in writing, so as to exempt Her Majesty's forces, visiting forces<sup>15</sup>, any headquarters or organisation<sup>16</sup>, or any person engaged in the carriage, keeping or supply of any military explosives<sup>17</sup> if that person is under the direct supervision of the Ministry of Defence<sup>18</sup>. Any such

exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State by a further certificate in writing at any time<sup>19</sup>.

Each part of dock premises which is being used for dock operations must be suitably and adequately lighted<sup>20</sup>, and every obstacle or hazard in dock premises which is likely to be dangerous when vehicles, lifting appliances or people move must be made conspicuous by means of colouring, marking, lighting or any combination of them<sup>21</sup>.

The Dangerous Substances in Harbour Areas Regulations 1987<sup>22</sup> make separate provision governing the entry into, and the handling, carriage, loading and unloading and storage of dangerous substances within, harbours and harbour areas. Those regulations are discussed elsewhere in this work<sup>23</sup>.

There are approved codes of practice relating to safety in docks<sup>24</sup>.

1 'Dock operations' are those processes set out in heads (1)-(4) in the text: Docks Regulations 1988, SI 1988/1655, reg 2(1). They do not include (1) a fish loading process within the meaning of the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656 (see PARA 715); (2) the loading or unloading of goods, or embarking or disembarking of persons, from a pleasure craft (ie any description of vessel when used solely for sport or recreation, other than for carrying fare paying passengers) or any activity incidental to those activities; or (3) beach landing operations wholly carried out by members of Her Majesty's forces or visiting forces (as to which see note 15) or a combination of both: Docks Regulations 1988, SI 1988/1655, reg 2(1).

The 1988 regulations apply to all dock premises in Great Britain, and outside Great Britain within territorial waters to and in relation to the loading, unloading, fuelling or provisioning of a vessel, as the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of what is now the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 8(c) (see PARA 305): Docks Regulations 1988, SI 1988/1655, reg 3; Interpretation Act 1978 s 17(2).

The Health and Safety Executive is responsible for the enforcement of the Docks Regulations 1988, SI 1988/1655, in relation to any activity carried on in dock premises save to the extent that some other body is made responsible by the relevant statutory provisions (as to which see PARA 302 note 24) notwithstanding the provisions of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3 (see PARAS 370, 372), but without prejudice to reg 5 (see PARA 367): Docks Regulations 1988, SI 1988/1655, reg 22(1), (2); Interpretation Act 1978 s 17(2).

2 'Goods' includes animals, pallets and freight containers, waste, solid ballast, and vehicles (as to which see PARA 710 note 1) which are being transported as cargo; and 'freight container' means a container as defined in the Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 2 (see PARA 714 note 1): Docks Regulations 1988, SI 1988/1655, reg 2(1). In *Hayward v Port of London Authority* [1955] 1 Lloyd's Rep 211, CA, it was held that ship's stores were 'goods' within the meaning of the regulations then existing; and see *Graves v J and E Hall Ltd* [1958] 2 Lloyd's Rep 100.

3 'Ship', except in the Docks Regulations 1988, SI 1988/1655, reg 4(4) (see note 10), includes all vessels (as to which see PARA 707 note 11) and hovercraft which operate on water or land and water: reg 2(1).

4 As to the meaning of 'dock' see PARA 311 note 1. 'Dock premises' means any dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities: Docks Regulations 1988, SI 1988/1655, reg 2(1).

5 'Welfare amenities' means (1) sanitary conveniences; (2) baths and shower baths; (3) washing facilities; (4) a supply of wholesome drinking water; (5) a supply of protective clothing, ie clothing suitable for the protection of the wearer in refrigerated space or against dirt from handling dirty goods or against inclement weather; (6) accommodation and facilities for changing into clothing worn during working hours and for storing and drying clothing so worn and clothing not so worn; (7) canteens or accommodation and facilities (including facilities for heating food and boiling water) for workers employed at dock premises to partake of meals provided by themselves; (8) shelters for use during inclement weather: Docks Regulations 1988, SI 1988/1655, reg 2(1).

6 Docks Regulations 1988, SI 1988/1655, reg 2(1).

7 As to the meaning of 'self-employed person' see PARA 302 note 5.

8 ie under the Health and Safety at Work etc Act 1974 s 4; see PARA 423.

9 Docks Regulations 1988, SI 1988/1655, reg 4(1). It is the duty of every employee to comply with such of the regulations as relate to the performance of or the refraining from an act by him in the course of a dock operation: reg 4(2). These provisions do not apply to regs 8(4), 11(5), 19(2)-(5), 20 (see PARAS 707, 710, 712-713), which expressly say on whom the duties are imposed: reg 4(3). Where a person supplies plant to another (the 'customer') under a hire-purchase agreement, conditional sale agreement or lease and (1) he carries on the business of financing the acquisition of goods by others by means of such agreements, or, if financing by means of leases, the use of goods by others; and (2) in the course of that business he acquired an interest in the plant supplied to the customer as a means of financing its acquisition by that customer (or, in the case of a lease, its provision to that customer); and (3) in the case of a lease he or his agent either has not had physical possession of that plant, or has had physical possession of it only for the purpose of passing it on to the customer, the customer and not the person who provided the finance is to be treated for these purposes as being the owner of the plant, and duties placed on owners in the 1988 regulations accordingly fall on the customer and not on the person providing the finance: reg 2(3).

10 Docks Regulations 1988, SI 1988/1655, reg 4(4). For the purposes of reg 4(4), 'master' means every person (except a pilot) having command or charge of a ship; and 'ship' includes every description of vessel used in navigation: Merchant Shipping Act 1995 s 313(1), applied by the Docks Regulations 1988, SI 1988/1655, reg 4(4); and by virtue of the Interpretation Act 1978 s 17(2).

11 As to what is reasonably practicable see PARA 417.

12 Docks Regulations 1988, SI 1988/1655, reg 5.

13 As to the Health and Safety Executive see PARA 361 et seq.

14 Docks Regulations 1988, SI 1988/1655, reg 21(1). The Executive must be satisfied that the health and safety of persons likely to be affected by the exemption will not be prejudiced because of it: see reg 21(2).

15 'Visiting force' has the same meaning as in the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Docks Regulations 1988, SI 1988/1655, reg 21(3)(b).

16 A headquarters or organisation is one designated as such for the purposes of the International Headquarters and Defence Organisations Act 1964 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Docks Regulations 1988, SI 1988/1655, reg 21(3)(c).

17 Ie military explosives within the meaning of the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) (see **EXPLOSIVES**): Docks Regulations 1988, SI 1988/1655, reg 21(3)(d).

18 Docks Regulations 1988, SI 1988/1655, reg 21(3).

19 Docks Regulations 1988, SI 1988/1655, reg 21(3).

20 Docks Regulations 1988, SI 1988/1655, reg 6(1).

21 Docks Regulations 1988, SI 1988/1655, reg 6(2).

22 Ie the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37: see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 700 et seq.

23 See **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 700 et seq.

24 See the Approved Code of Practice on Dangerous Substances in Harbour Areas (COP 18); and the Approved Code of Practice on Safety in Docks (COP 25). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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## 707. Access.

Subject to a requirement to keep all floors, decks, surfaces, stairs, steps, passageways and gangways in dock premises<sup>1</sup> free, so far as is reasonably practicable<sup>2</sup>, from any substance or obstacle likely to cause persons to slip or fall or vehicles to skid<sup>3</sup>, safe means of access<sup>4</sup> must be provided and properly maintained to every part of dock premises which any person has to visit for the purpose of dock operations<sup>5</sup>, and in particular floors, decks, surfaces, stairs, steps, passageways and gangways comprised in dock premises must not be used unless they are of adequate strength for the purpose required, of sound construction and properly maintained<sup>6</sup>.

Portable ladders must not be used as a means of access to ships, holds, freight container stacks on board ships, or a vertical stack of three or more freight containers on dock premises which are not part of a ship, except where no other safer means of access is reasonably practicable<sup>7</sup>.

There must be secure and adequate fencing at the following places where any person is engaged in dock operations, namely: (1) every break, dangerous corner, and other dangerous part or edge of a dock, wharf, jetty or quay<sup>8</sup>; (2) every open side of a gangway, footway over a bridge, caisson or dock<sup>9</sup>, except in so far as such fencing is impracticable because of the nature of the work carried out there and either the work is in progress or there is a short interruption for a meal or other purpose<sup>10</sup>.

No vessel<sup>11</sup> may be used to transport a person at work to or from any working place unless the vessel is safe<sup>12</sup>, and, without prejudice to that requirement, any such vessel must be of a sound and suitable construction, properly equipped, properly maintained, in the charge of a competent person, neither overcrowded nor overloaded, and currently certified as suitable<sup>13</sup> by a competent person in a certificate containing such particulars as are approved in writing for the time being by the Health and Safety Executive for the purpose<sup>14</sup>. The certificate must be kept by the owner of the vessel<sup>15</sup>.

1 As to the meaning of 'dock premises' see PARA 706 note 4.

2 As to what is reasonably practicable see PARA 417.

3 Docks Regulations 1988, SI 1988/1655, reg 7(2).

4 'Access' includes egress: Docks Regulations 1988, SI 1988/1655, reg 2(1).

5 As to the meaning of 'dock operations' see PARA 706 note 1.

6 Docks Regulations 1988, SI 1988/1655, reg 7(1). 'Maintained' means maintained in an efficient state, in efficient working order, and in good repair: reg 2(1).

7 Docks Regulations 1988, SI 1988/1655, reg 7(3).

8 Docks Regulations 1988, SI 1988/1655, reg 7(6)(a).

9 Docks Regulations 1988, SI 1988/1655, reg 7(6)(b) (amended by SI 2005/735). 'Dock gate' means any lock gate or other gate which can close off the entrance to the dock or part of the dock from the sea or other waterway, but does not include any gate on land which controls access by vehicles or pedestrians: Docks Regulations 1988, SI 1988/1655, reg 2(1).

10 Docks Regulations 1988, SI 1988/1655, reg 7(6).

11 'Vessel' means any description of craft used for the transport of goods or passengers or the storage of goods or the accommodation of passengers on water, whether used in navigation or not: Docks Regulations 1988, SI 1988/1655, reg 2(1).

12 Docks Regulations 1988, SI 1988/1655, reg 8(1).

13 This requirement does not apply to a vessel in respect of which there is in force a certificate as to a survey carried out pursuant to the Merchant Shipping Act 1995 s 258: Docks Regulations 1988, SI 1988/1655, reg 8(3); Interpretation Act 1978 s 17(2).

14 Docks Regulations 1988, SI 1988/1655, reg 8(2). As to the Health and Safety Executive see PARA 361 et seq.

15 Docks Regulations 1988, SI 1988/1655, reg 8(4).

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**708. Rescue, life-saving and fire-fighting equipment and means of escape.**

All dock premises<sup>1</sup> must be provided with adequate and suitable rescue and life-saving equipment, means to effect escape from danger, and fire-fighting equipment, which must be spaced at intervals that are reasonable in all the circumstances and be properly maintained<sup>2</sup>.

1 As to the meaning of 'dock premises' see PARA 706 note 4.

2 Docks Regulations 1988, SI 1988/1655, reg 9. As to the meaning of 'maintained' see PARA 707 note 6.

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### **709. Hatches, ramps and car-decks.**

A hatch covering<sup>1</sup> must not be used unless it is of sound construction and material, and of adequate strength for the purpose for which it is used, free from defect and properly maintained<sup>2</sup>; unless it can be removed and replaced, whether manually or with mechanical power, without endangering any person<sup>3</sup>; and unless information showing the correct replacement position is clearly marked, except in so far as hatch coverings are interchangeable or incapable of being incorrectly replaced<sup>4</sup>; and must not be replaced contrary to information showing the correct replacement position<sup>5</sup>. A hatch<sup>6</sup> must not be used unless either the hatch covering has been completely removed or, if not completely removed, it is secure<sup>7</sup>.

A load must not be placed on a hatch covering if it is likely to affect the safety of the hatch covering or endanger any person<sup>8</sup>.

Except in the event of an emergency endangering health or safety, no ship's ramp or door associated with a ship's ramp, power-operated hatch covering, retractable car-deck, or shore-based ramp may be operated in the course of a dock operation<sup>9</sup> except by a person authorised to do so by the person in control of that operation<sup>10</sup>.

1 'Hatch covering' includes hatch covers, hatch beams and attached fixtures and fittings: Docks Regulations 1988, SI 1988/1655, reg 2(1).

2 Docks Regulations 1988, SI 1988/1655, reg 10(1). As to the meaning of 'maintained' see PARA 707 note 6.

3 Docks Regulations 1988, SI 1988/1655, reg 10(2)(a).

4 Docks Regulations 1988, SI 1988/1655, reg 10(2)(b).

5 Docks Regulations 1988, SI 1988/1655, reg 10(4).

6 'Hatch' means a ship's hatch: Docks Regulations 1988, SI 1988/1655, reg 2(1).

7 Docks Regulations 1988, SI 1988/1655, reg 10(3).

8 Docks Regulations 1988, SI 1988/1655, reg 10(5).

9 As to the meaning of 'dock operations' see PARA 706 note 1.

10 Docks Regulations 1988, SI 1988/1655, reg 10(6).



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## 710. Drivers and vehicles.

Except in the case of employees who drive vehicles<sup>1</sup> on dock premises<sup>2</sup> only in the course of visiting or passing through the premises or for the purpose of travelling on board ship with that vehicle<sup>3</sup>, no powered vehicle may be driven or powered lifting appliance<sup>4</sup> operated by an employee<sup>5</sup> in the course of dock operations<sup>6</sup> unless he is authorised to do so by his employer<sup>7</sup>. Except where he is undergoing a suitable course of training under the proper supervision of a competent instructor, a person must not be authorised to drive a vehicle or operate a lifting appliance unless he is fit to do so<sup>8</sup>; and unless he (1) is competent to do so; (2) has been appropriately trained; and (3) in the case of a lifting appliance, is over 18 years of age or is a member of Her Majesty's forces<sup>9</sup>.

Every employer must keep a record of the names of his employees who drive powered vehicles or operate powered lifting appliances in the course of dock operations, and such a record must contain particulars of any relevant training provided by that employer<sup>10</sup>.

Vehicles used by employees or self-employed persons<sup>11</sup> in the course of dock operations must be properly maintained<sup>12</sup>. Danger from use and movement of all vehicles on dock premises must, so far as is reasonably practicable<sup>13</sup>, be prevented, and the means of preventing such danger must where applicable include:

- 1506 (a) safe and adequate railways, roadways and parking facilities;
- 1507 (b) adequate arrangements for traffic control, which must include proper signs and markings informing and warning drivers;
- 1508 (c) safe arrangements for operating and moving vehicles where the driver's field of view is not sufficient to carry out the required operation or movement without risk of danger to any person;
- 1509 (d) safe arrangements for refuelling vehicles;
- 1510 (e) suitable barriers;
- 1511 (f) safe arrangements for the movement and stacking of freight containers<sup>14</sup>;
- 1512 (g) safe arrangements for coupling of vehicles<sup>15</sup>.

A vehicle used by an employee or self-employed person in the course of dock operations:

- 1513 (i) must not carry any passenger, except where proper seating is available for and used by him, or other safe arrangements are made and it is appropriate and necessary for the work being carried out<sup>16</sup>;
- 1514 (ii) must not be driven in an unsafe manner<sup>17</sup>; and
- 1515 (iii) must not carry any load which is insecure<sup>18</sup>.

1 'Vehicle' includes all lift trucks, locomotives and rolling-stock, and trailers and semi-trailers and other mechanical plant which moves on wheels, tracks, skids or any combination thereof: Docks Regulations 1988, SI 1988/1655, reg 2(1).

2 As to the meaning of 'dock premises' see PARA 706 note 4.

3 Docks Regulations 1988, SI 1988/1655, reg 11(6).

- 4 As to the meaning of 'lifting appliance' see PARA 711 note 1.
- 5 As to the meaning of 'employee' see PARA 302 note 4.
- 6 As to the meaning of 'dock operations' see PARA 706 note 1.
- 7 Docks Regulations 1988, SI 1988/1655, reg 11(1).
- 8 Docks Regulations 1988, SI 1988/1655, reg 11(2). Without prejudice to the generality of this provision, a person is deemed unfit for this purpose if he is certified as so unfit by a registered medical practitioner: reg 11(3). As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.
- 9 Docks Regulations 1988, SI 1988/1655, reg 11(4).
- 10 Docks Regulations 1988, SI 1988/1655, reg 11(5).
- 11 As to the meaning of 'self-employed person' see PARA 302 note 5.
- 12 Docks Regulations 1988, SI 1988/1655, reg 12(1). As to the meaning of 'maintained' see PARA 707 note 6.
- 13 As to what is reasonably practicable see PARA 417.
- 14 As to the meaning of 'freight container' see PARA 706 note 2.
- 15 Docks Regulations 1988, SI 1988/1655, reg 12(2)(a)-(g).
- 16 Docks Regulations 1988, SI 1988/1655, reg 12(3)(a).
- 17 Docks Regulations 1988, SI 1988/1655, reg 12(3)(b).
- 18 Docks Regulations 1988, SI 1988/1655, reg 12(3)(c).

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## 711. Lifting plant.

No lifting plant<sup>1</sup> may be used on dock premises unless it is of good design and construction, of adequate strength for the purpose for which it is used, of sound material and free from patent defect, properly installed or assembled, and properly maintained<sup>2</sup>. No pallet or other similar piece of equipment for supporting loads, lifting attachment which forms an integral part of the load, one-trip sling, or pre-slung cargo sling may be used unless it is of good construction, of adequate strength for the purpose for which it is used and free from patent defect<sup>3</sup>.

Lifting plant must not be used other than in a safe and proper manner<sup>4</sup>, and, without prejudice to this requirement, is to be deemed not to be safe and proper if, except for the purpose of carrying out a thorough examination under the relevant regulations<sup>5</sup>, it is loaded in excess of its safe working load<sup>6</sup>.

Every lifting appliance must be clearly and legibly marked with its safe working load or loads, and a means of identification<sup>7</sup>, provided that it is sufficient compliance with this requirement, in the case of a lifting appliance having more than one safe working load, to have attached to the appliance tables setting out the safe working loads<sup>8</sup>. In addition to this requirement, every item of lifting gear which weighs a significant proportion of the safe working load of any lifting appliance with which it is intended to be used must be clearly marked with its weight<sup>9</sup>.

1 'Lifting plant' means any lifting appliance or lifting gear: Docks Regulations 1988, SI 1988/1655, reg 2(1). 'Lifting appliance' means any stationary or mobile appliance (and every part thereof including attachments used for anchoring, fixing or supporting that appliance but not including vehicle coupling arrangements) which is used on dock premises for the purpose of suspending, raising or lowering loads or moving them from one position to another whilst suspended, and includes lift trucks; it does not include (1) pipes, roadways or gangways; or (2) screw, belt, bucket or other conveyors, used (in either case) for the continuous movement of goods or people, but it does include the lifting appliance used to suspend, raise, lower or move any of those items: reg 2(1). 'Lifting gear' means any gear by means of which a load can be attached to any lifting appliance and which does not form an integral part of that appliance or load, but does not include pallets, one-trip slings (ie a sling which has not previously been used for lifting any other load and is fitted to the load at the commencement of the journey and intended to be disposed of at the destination of that journey), pre-slung cargo slings (ie a sling which was in position round the goods before they were handled in the course of dock operations), and freight containers (as to which see PARA 706 note 2): reg 2(1). As to the meanings of 'dock operations' and 'dock premises' see PARA 706 notes 1, 4.

2 Docks Regulations 1988, SI 1988/1655, reg 13(1). As to the meaning of 'maintained' see PARA 707 note 6.

3 Docks Regulations 1988, SI 1988/1655, reg 13(2). As to one-trip slings and pre-slung cargo-slugs see note 1.

4 Docks Regulations 1988, SI 1988/1655, reg 13(3).

5 Ie a thorough examination under the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9: see PARA 520.

6 Docks Regulations 1988, SI 1988/1655, reg 13(4) (amended by SI 1998/2307). 'Safe working load', in relation to lifting plant, means (1) the safe working load for that plant specified in the latest certificate or report of examination obtained pursuant to the Docks Regulations 1988, SI 1988/1655, reg 17 (revoked) (see now the Lifting Operations and Lifting Equipment Regulations 1998, SI 1998/2307, reg 9; and PARA 520), except that where the safe working load so specified is restricted to one particular operation, then, for the purpose of the Docks Regulations 1988, SI 1988/1655, reg 16(1)-(2) only (which relates to markings and indicators on lifting plant), the safe working load is that appropriate to the plant in normal use; or (2) where no certificate or report has been obtained pursuant to reg 17 (revoked) or the Lifting Operations and Lifting Equipment Regulations

1998, SI 1998/2307, reg 9, but a certificate of examination has been obtained pursuant to the Docks Regulations 1925, SR & O 1925/231, or the Docks Regulations 1934, SR & O 1934/279 (both revoked) which specifies the safe working load, the safe working load specified in the latest certificate so obtained; or (3) where neither head (1) nor (2) above applies, the safe working load specified by the manufacturer of the plant in any information supplied with the plant: Docks Regulations 1988, SI 1988/1655, reg 2(1); Interpretation Act 1978 s 17(2).

- 7 Docks Regulations 1988, SI 1988/1655, reg 16(1).
- 8 Docks Regulations 1988, SI 1988/1655, reg 16(2).
- 9 Docks Regulations 1988, SI 1988/1655, reg 16(6).

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## **712. Welfare amenities and protective clothing.**

Welfare amenities<sup>1</sup> which are in all the circumstances adequate and suitable must be provided and maintained<sup>2</sup> for the use of persons at work<sup>3</sup>. If an employee<sup>4</sup> is to work in a part of dock premises<sup>5</sup> where there is a foreseeable risk of injury to the head and a suitable safety helmet would provide protection against that risk, his employer must provide the employee with such a helmet, and the employee must wear the helmet in a proper manner when working there<sup>6</sup>.

If an employee is to work on foot in an area in dock premises where roll-on and roll-off operations<sup>7</sup> are carried out, where work with straddle carriers is carried out, or which is a lorry park, his employer must provide him with a suitable high-visibility garment, and the employee must wear the garment in a proper manner when so working there; except that in the case of a lorry park the garment need only be provided and worn if it is necessary for the employee's safety<sup>8</sup>.

Every self-employed person<sup>9</sup> must wear in a proper manner a suitable safety helmet or a suitable high-visibility garment in those circumstances (as set out above) where an employee would be required to wear such a helmet or garment<sup>10</sup>.

1 As to the meaning of 'welfare amenities' see PARA 706 note 5.

2 As to the meaning of 'maintained' see PARA 707 note 6.

3 Docks Regulations 1988, SI 1988/1655, reg 19(1). For exemptions from the regulations see PARA 706.

4 As to the meaning of 'employee' see PARA 302 note 4.

5 As to the meaning of 'dock premises' see PARA 706 note 4.

6 Docks Regulations 1988, SI 1988/1655, reg 19(2).

7 'Roll-on and roll-off operations' means the driving of vehicles onto and off ships carried out on the shoreside approach to the ship, on the means of access to the ship, or on board the ship: Docks Regulations 1988, SI 1988/1655, reg 19(4).

8 Docks Regulations 1988, SI 1988/1655, reg 19(3).

9 As to the meaning of 'self-employed person' see PARA 302 note 5.

10 Docks Regulations 1988, SI 1988/1655, reg 19(5).

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**713. Duty to report defective plant.**

Where a self-employed person<sup>1</sup> or an employee<sup>2</sup> discovers any defect in any plant which he is required to use in the course of dock operations<sup>3</sup> which he cannot rectify, he must, without unreasonable delay, report that defect to the person in control of that plant, or in the case of an employee, to his employer or the person in control of the plant<sup>4</sup>.

1 As to the meaning of 'self-employed person' see PARA 302 note 5.

2 As to the meaning of 'employee' see PARA 302 note 4.

3 As to the meaning of 'dock operations' see PARA 706 note 1.

4 Docks Regulations 1988, SI 1988/1655, reg 20. For exemptions from the regulations see PARA 706.

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#### **714. Safety of freight containers.**

The owner or lessee of a container<sup>1</sup> may not use<sup>2</sup> it or permit it to be used unless (1) it has a valid approval<sup>3</sup> issued by the Health and Safety Executive, or by a person or body appointed<sup>4</sup> by the Health and Safety Executive, or by or under the authority of a government which is party to the International Convention for Safe Containers<sup>5</sup>; (2) it has a valid safety approval plate fixed to it<sup>6</sup>; (3) it is properly maintained<sup>7</sup>; (4) statutory requirements relating to examination are met<sup>8</sup>; and (5) all markings on the container showing maximum gross weight are consistent with the information on the safety approval plate<sup>9</sup>. Any other person using or permitting the use of a container, so far as reasonably practicable, must ensure that the conditions in heads (2) and (5) above are satisfied<sup>10</sup>. Where it is an express term of a bailment<sup>11</sup> of a container that the bailee is to be responsible for ensuring that the container is maintained or examined, he must ensure that the conditions in heads (3) and (4) above are satisfied<sup>12</sup>.

Contravention of the provisions described above is contravention of health and safety regulations<sup>13</sup>, and punishable accordingly<sup>14</sup>. However, in proceedings for contravention of head (3) or head (4) above it is a defence to show that at the time of the contravention a bailment or lease was in force in respect of the container, and (a) in the case of an owner, that it was an express term that the bailee or lessee should be responsible for ensuring maintenance or examination of the container; (b) in the case of a lessee, that it was not an express term that he should be so responsible, or that he had become a lessor under a further lease an express term of which made the further lessee so responsible; or (c) in the case of a bailee, that he had become a bailor under a further bailment an express term of which made the further bailee so responsible<sup>15</sup>.

The Health and Safety Executive may by certificate in writing exempt any container or class of containers, or any person or class of persons, from any of the above requirements<sup>16</sup>, but must be satisfied that the health and safety of those likely to be affected by the exemption will not thereby be prejudiced<sup>17</sup>.

1 'Container' means an article of transport equipment which is (1) of a permanent character and accordingly strong enough for repeated use; (2) designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading; (3) designed to be secured or readily handled or both, having corner fittings for these purposes; and (4) of a size such that the area enclosed by the outer bottom corners is at least either 7 square metres (if the container has top corner fittings) or 14 square metres (in any other case): Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 2(1). It includes a container when carried on a chassis but does not include a vehicle or packaging, any article of transport equipment designed solely for air transport, a swap body (except when carried by or on board a seagoing ship and not mounted on a road vehicle or rail wagon): reg 2(1). 'Corner fittings' means an arrangement of apertures and faces at either or both of the top and bottom of the container for the purpose of handling, stacking or securing: reg 2(1). 'Swap body' means a container specially designed for road only or rail and road and without stacking capability or lift facilities: reg 2(1).

2 'Use' means use for the purpose for which the container was designed, but does not include (1) movement to a place for remedial action, provided that as far as reasonably practicable the movement is without risk to the safety of any person and the action is carried out before the repacking of goods; or (2) if the container is not loaded with goods, transport to any place for testing the container or delivery of the container to its purchaser by the vendor or his agent: Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 2(1).

3 An approval ceases to be valid if the issuing body (see head (1) in the text) states in writing that the approval is no longer valid, or in any case if the Health and Safety Executive so states in writing: Freight

Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 5(2). As to the Health and Safety Executive see PARA 361 et seq.

4 Such appointment, which must be in writing, may be subject to conditions and limited as to time, and may be revoked or varied at any time by the Health and Safety Executive in writing: Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 5(3).

5 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, regs 4(1)(a), 5(1). The convention referred to in the text is the International Convention for Safe Containers (Geneva, 2 December 1972; TS 40 (1979); Cmnd 7535) ('CSC'), which was ratified by the United Kingdom on 8 March 1978. The Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, apply to (1) any container used at work, or supplied for use at work, and which is in Great Britain; (2) any container so used or supplied and which is outside Great Britain in circumstances in which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see PARA 305): Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 3; Interpretation Act 1978 s 17(2). As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 305 notes 7-8.

6 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(1)(b). 'Safety approval plate' means a plate in the form and containing the information specified by the Schedule: reg 2(1). A container has a valid safety approval plate if (1) the plate is marked and fixed in accordance with the Schedule; (2) the information thereon is correct and relates to a valid approval (see note 3); and (3) it is fixed either after manufacture and before first use or after examination in accordance with reg 7 (see note 8): reg 6. The safety approval plate must be permanently fixed to the container in a position such that it is (a) readily visible; and (b) adjacent to any other officially approved plate carried on the container; and (c) not likely to be easily damaged: Schedule para 1. As to the form of and markings on the safety approval plate see Schedule para 2. The Schedule is not set out in detail in this work.

7 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(1)(c). 'Maintained' means maintained in an efficient state in efficient working order and good repair: reg 2(1).

8 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(1)(d). Such examination must be in accordance with a scheme or programme approved for the purpose by the Health and Safety Executive: reg 7(1). Matters required by the scheme or programme to be marked must be marked on the safety approval plate (see the text and note 6) or as close to it as practicable: reg 7(2). Compliance with the procedure adopted by a state other than the United Kingdom where the owner of the container is permanently resident is sufficient compliance if that state is a party to the Convention (see the text and note 5) and the procedure has been approved or prescribed by or under the authority of that state for the purpose of the Convention: Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 7(4).

9 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(1)(e).

10 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(2).

11 See **BAILMENT** vol 3(1) (2005 Reissue) PARA 63.

12 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(3).

13 See the Health and Safety at Work etc Act 1974 s 15, under which the Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, were made; and PARAS 424-425.

14 See the Health and Safety at Work etc Act 1974 s 33; and PARAS 852-853.

15 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 4(5). As to the carrier as bailee see **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 1, 59. It is a defence to any proceedings for contravention of head (1) in the text that at the time of the contravention an approval had been given by an organisation authorised for this purpose by the Health and Safety Executive before the 1984 regulations came into operation and such an approval had not ceased to be valid for the purposes for which it was given: reg 4(4).

16 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 8(1). Such exemption may be conditional or limited as to time, and may be revoked by a certificate in writing at any time: reg 8(1).

17 Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 8(2).



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## **(ii) Loading and Unloading of Fishing Vessels**

### **715. Loading and unloading of fishing vessels.**

Duties are imposed<sup>1</sup> on every employer, self-employed person<sup>2</sup>, skipper<sup>3</sup> of a fishing vessel<sup>4</sup>, and others who have control<sup>5</sup> of non-domestic premises<sup>6</sup> made available as places of work in relation to fish loading processes<sup>7</sup>. The duties extend only to matters within their control<sup>8</sup>, and apply to all fish loading processes in Great Britain<sup>9</sup>.

So far as is reasonably practicable<sup>10</sup>, all floors, decks, surfaces, stairs, steps, passages and gangways in any place of work or any access to and egress from it must be kept free from any substances likely to cause persons to slip or fall or vehicles to skid<sup>11</sup>. Subject to this, a safe place of work must be provided and properly maintained<sup>12</sup> for any person engaged in a fish loading process, as must a safe access to and egress from that place of work or any other place which any person has to visit for the purpose of the fish loading process<sup>13</sup>. Secure and adequate fencing must be provided at:

- 1516 (1) every break, dangerous corner or other dangerous part or edge of a quay<sup>14</sup> where persons are engaged in fish loading processes;
- 1517 (2) every open side of a gangway, footway over a bridge, caisson, or dock gate<sup>15</sup>,

except in so far as this is impracticable because of the nature of the work carried out there, and either work is in progress or there is a short interruption for a meal or other purpose<sup>16</sup>.

Each part of a quay or fishing vessel where persons are engaged in a fish loading process, and every means of access to and egress from there, must be suitably and adequately lighted<sup>17</sup>.

Adequate and suitable rescue and life-saving equipment, means to effect escape from danger and fire-fighting equipment spaced at reasonable intervals, must be provided and properly maintained<sup>18</sup>.

Every fish loading process must be planned and executed in such a manner as to ensure, so far as is reasonably practicable, that no persons will be exposed to danger<sup>19</sup>, and safe plant and equipment must, so far as is reasonably practicable, be provided and properly maintained<sup>20</sup>.

The Health and Safety Executive may grant certificates of exemption from these provisions<sup>21</sup>. It may not, however, grant such a certificate unless having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it<sup>22</sup>.

1    le under the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656. These complement the Docks Regulations 1988, SI 1988/1655 (see PARA 706 et seq) under which fish loading processes are not classed as dock operations (see PARA 706 note 1).

2    As to the meaning of 'self-employed person' see PARA 302 note 5.

3 The 'skipper' is the person (except a pilot) having command or charge of a fishing vessel: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2.

4 A 'fishing vessel' means any description of craft used for the transport or storage of wet fish, whether used in navigation or not, but not craft when used for the principal purpose of carrying passengers or goods other than wet fish, or solely for sport or recreation: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2. 'Wet fish' includes all fish, molluscs and crustaceans whether living or dead, but does not include fishmeal, fish manure, or fish guano; or fish, molluscs or crustaceans which are, or have been, tinned, frozen solid in blocks, or otherwise processed: reg 2.

5 These are persons who are subject to the duty imposed by the Health and Safety at Work etc Act 1974 s 4, who have duties in respect of others not their employees who use non-domestic premises over which they have control: see PARA 423.

6 As to the meaning of 'non-domestic premises' see PARA 302 note 6.

7 A 'fish loading process' is the loading, unloading, moving or handling of wet fish on, at or nearby any quay or on any fishing vessel when moored at the quay, or any activity incidental to those activities including the mooring, fuelling and provisioning of the fishing vessel at the quay or the transfer of wet fish from one fishing vessel to another when at least one of the fishing vessels is moored at the quay: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2. 'Handling' includes gutting of wet fish and loading of wet fish for transport, but does not include tinning, freezing solid in blocks, curing, freeze-drying or other means of processing: reg 2. 'Processing' does not include keeping fish, molluscs or crustaceans (or part of them) fresh by placing them on ice: reg 2.

8 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 4.

9 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 3. As to the meaning of 'Great Britain' see PARA 305 note 7.

10 As to what is reasonably practicable see PARA 417.

11 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(2).

12 'Maintained' means maintained in an efficient state, in efficient working order and in good repair: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2.

13 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(1). This obligation is expressed in absolute terms: cf that under reg 5(2) which is qualified by a requirement of reasonable practicability: see the text and notes 10-11.

14 'Quay' includes any wharf, jetty or dock: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2.

15 'Dock gate' means any lock gate or other gate which can close off the entrance to the dock or part of the dock from the sea or other waterway, but does not include any gate on land which controls access by vehicles or pedestrians: Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 2.

16 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(3) (amended by SI 2005/735).

17 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(4).

18 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 5(5).

19 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 6(1).

20 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 6(2).

21 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 7(1). Any such exemption may be limited to any person or class of persons or activity or class of activities; may be subject to conditions and to a limit of time; and may be revoked by a certificate in writing at any time: reg 7(1).

22 Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 7(2). As to the Health and Safety Executive see PARA 361 et seq.

The Health and Safety Executive is responsible for the enforcement of the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, and of the Health and Safety at Work etc Act 1974 ss 2-4, 6-8 (see PARA 420 et seq) in relation to fish loading processes, notwithstanding the provisions of the Health and Safety

(Enforcing Authority) Regulations 1998, SI 1998/494, reg 5 (see PARA 367): Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656, reg 8: Interpretation Act 1978 s 17(2).

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### (3) SHIPBUILDING AND SHIP-REPAIRING

#### 716. Application of regulations.

Detailed requirements as to safety and health in carrying out specified operations<sup>1</sup> in relation to ships or vessels are imposed by regulations which are generally<sup>2</sup> in addition to and not in substitution for the requirements of the Factories Act 1961<sup>3</sup>. They apply to:

- 1518 (1) work carried out in any of the operations in a shipyard<sup>4</sup> in the case of a ship or vessel, whether or not the yard forms part of a harbour<sup>5</sup> or wet dock<sup>6</sup>; and
- 1519 (2) such work carried out in a harbour or wet dock relating to a ship, but not a vessel other than a ship<sup>7</sup>, except work done:

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- 20. (a) by the master or crew<sup>8</sup>;
- 21. (b) on board a ship during a trial run<sup>9</sup>;
- 22. (c) for raising or removing a sunk or stranded ship<sup>10</sup>; or
- 23. (d) for the purpose of bringing a ship under command<sup>11</sup>.

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Certain provisions do not apply to ships and vessels which do not exceed either 30 metres in length or 2.9 metres in depth<sup>12</sup>, and exemption may also be granted by certificate of an authorised inspector if he is satisfied that the requirements are unnecessary for the protection of persons employed, or not reasonably practicable<sup>13</sup>.

1 'Operations', in relation to a ship or vessel, means its construction, reconstruction, repairing, refitting, painting and finishing, the scaling, scurfing or cleaning of its boilers (including combustion chambers or smoke boxes) and the cleaning of its bilges or oil-fuel tanks or any of its tanks last used for carrying oil of any description: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2). As to further provisions relating to health and safety on board ships see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 623 et seq. 'Ship' and 'vessel' have the same meanings as in the Merchant Shipping Act 1995 (see PARA 706 note 10; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229), except that neither includes a caisson, dock gate or pontoon: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2); Interpretation Act 1978 s 17(2). 'Oil' means any liquid which has a flashpoint below 132 degrees Celsius (Abel closed test or Pensky-Martens closed test, whichever is appropriate) and also includes lubricating oil, liquid methane, liquid butane and liquid propane: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2) (amended by SI 1983/644). As to the 'Abel closed test' and the 'Pensky-Martens closed test' see the Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2) (amended for these purposes by SI 1992/1811; SI 1993/1746; and SI 1994/3247).

2 The Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(4) states that it is subject to the provisions of regs 52, 67, 68, but these regulations have been revoked.

3 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(4) (amended by SI 1998/2307). Health and safety requirements under the Factories Act 1961 have in most instances been replaced by requirements under health and safety regulations made under the Health and Safety at Work etc Act 1974: see PARA 424.

4 'Shipyard' means any yard or dry dock (including its precincts) in which ships or vessels are constructed, reconstructed, repaired, refitted or finished: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2).

5 'Harbour' has the same meaning as in the Merchant Shipping Act 1995 (ie it includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers: see s 313(1)): Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2); Interpretation Act 1978 s 17(2).

6 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(a).

7 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(b).

8 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(b)(i).

9 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(b)(ii).

10 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(b)(iii).

11 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(1)(b)(iv).

12 The Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, Pts II-IX (regs 6-81), except regs 6, 80, do not apply to operations in a shipyard on vessels exceeding the specified length and overall depth; and Pts II-IX, except reg 6, do not apply to operations in a harbour or wet dock on ships either not exceeding the specified length or not exceeding the specified overall depth: reg 2(2)(a), (b) (amended by SI 1984/644; SI 1998/2307; and by virtue of SI 2002/2776) (omitting references to specified regulations which are now revoked). The Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(2)(c), referring to regulations all of which are now revoked, is not set out in this note. 'Overall depth' means the vertical distance between the uppermost deck at the side of the vessel and the bottom of the keel, measured at the middle of the overall length: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2).

13 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 2(3) (amended by SI 1995/2923). As to the authorised inspector see PARA 375 note 2; and as to what is reasonably practicable see PARA 417.

It is the duty of every employer who is undertaking any of the operations to comply with such of the provisions of the following regulations as relate to any work, act or operation performed by him, that is to say: (1) in so far as they affect any person employed by him, regs 6, 11(1), 70(1), (4), 80 and 81 (see PARA 717 et seq); reg 11(2) (see PARA 717), except in so far as the person having the general management and control of a public dry dock is responsible under reg 4(5); reg 69(1) (see PARA 718), except in so far as the person having the general management and control of a public dry dock is responsible under reg 4(5) or the person having the general management and control of a dock, wharf or quay is responsible under reg 4(6); and reg 70(2), (3) (see PARA 718), except in so far as the shipowner or master or officer in charge is responsible under reg 4(7); (2) in so far as they affect any person whether or not a person employed by him, regs 71 and 72 (see PARA 718): reg 4(1) (amended by SI 1988/1657) (omitting references to specified regulations which are now revoked). 'Public dry dock' means a dry dock available for hire: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2).

It is the duty of every person who works or uses any equipment or appliance to which any of the provisions of the Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(4) and (5) applies to work or use such machinery, plant, equipment or appliance in a manner which complies with those provisions: reg 4(3)(b) (omitting references to specified regulations which are now revoked).

In the case of a public dry dock, it is the duty of the person having the general management and control of the dock to comply as respects gangways, platforms and stairways provided by him with the provisions of reg 11(2) in so far as it relates to the sound construction of scows or floating platforms provided by him, and reg 69(1) as respects lighting of approaches to the edge of the dock: reg 4(5) (omitting references to specified regulations which are now revoked). In the case of a ship lying in or at a dock, wharf or quay but not in a shipyard, it is the duty of the person having the general management and control of the dock, wharf or quay to comply with reg 69(1) as respects the lighting of approaches to the edge of the dock, wharf or quay: reg 4(6). It is the duty of the shipowner and of the master or officer in charge of a ship or vessel, where the control of the ship or vessel apart from the operations remains with the shipowner or master or officer in charge, to comply with the provisions of reg 69(2) and reg 70(2), (3): reg 4(7) (omitting references to specified regulations which are now revoked).

It is the duty of every person employed to comply with such of the provisions of regs 69(6), 70(4), and 72 as expressly impose a duty on him, and it is further the duty of every person employed if he discovers any defect in any machinery, plant, equipment or appliance, to report such defect without unreasonable delay to his employer or foreman or to a person appointed by the employer under reg 81: reg 4(8) (amended by SI 1988/1657) (omitting references to specified regulations which are now revoked).

For the purposes of the provisions in the Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 4 which impose upon an employer a duty to comply with the requirements of certain specified regulations in so far as they affect any person employed by him, the requirements of those regulations, other than reg 70, are to be deemed not to affect any person employed if and so long as his presence in any place is not in the course of

performing any work on behalf of his employer or is not expressly or impliedly authorised or permitted by his employer: reg 4(9) (omitting references to specified regulations which are now revoked). Regulation 4(2), (3)(a), (4), referring to regulations all of which are now revoked, is not set out in this note.

'Person employed' means a person employed in any of the operations (see note 1): reg 3(2).

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## **717. Access.**

Without prejudice to specific provisions of the Shipbuilding and Ship-repairing Regulations 1960<sup>1</sup>, there is a general duty, so far as is reasonably practicable<sup>2</sup>, to provide and maintain<sup>3</sup> safe means of access to every place at which any person has at any time to work in connection with the operations<sup>4</sup>, and it must be sufficient having regard to the number of persons employed<sup>5</sup> and must, so far as is reasonably practicable, be kept clear of substances likely to make foothold or handhold insecure and of any obstruction<sup>6</sup>.

Where a person employed has to proceed to or from a ship by water, proper measures must be taken for his safe transport<sup>7</sup>. Scows and floating platforms used in the operations must be of sound construction, properly maintained and not overcrowded<sup>8</sup>.

1    le the Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932.

2    As to what is reasonably practicable see PARA 417.

3    As to the meaning of 'maintained' see PARA 459 note 3.

4    As to the meaning of 'operations' see PARA 716 note 1.

5    As to the meaning of 'persons employed' see PARA 716 note 13.

6    Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 6. As to the application of the regulations see PARA 716.

7    Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 11(1).

8    Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 11(2).

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### **718. Miscellaneous safety provisions.**

All parts of a vessel<sup>1</sup> and all other places where the operations<sup>2</sup> are being carried on, and all approaches to such parts and to places to which a person employed<sup>3</sup> may be required to proceed<sup>4</sup> in the course of his employment, must be sufficiently and suitably lighted, due regard being had to the safety of the vessel and cargo and of the navigation of other vessels, and to any local statutory requirements as to the lighting of the harbour<sup>5</sup> or dock<sup>6</sup>.

Where in a harbour or wet dock the shipowner retains control of the ship, apart from the operations, the ship's permanent lighting must be maintained in operation for lighting the ship and the means of access to it, where that access is provided by the shipowner<sup>7</sup>. Portable lamps (including hand lamps carried by persons employed) used for the operations must be maintained in an efficient state and working order and in good repair, and those in which liquid fuel is used must have a properly fitting screw lid and stopper<sup>8</sup>. Petroleum spirit or naphtha must not be used in lamps used for lighting, and only paraffin or another liquid with a flash point over 38 degrees C (Abel or Pensky-Martens closed test, whichever is appropriate) may be so used<sup>9</sup>.

No person, whether or not a person employed, unless duly authorised or in case of necessity, may interfere with or remove any means of lighting provided under this provision<sup>10</sup>.

Work must not be permitted in any boiler, boiler-furnace or boiler-flue until it has been sufficiently cooled to make work safe for the persons employed<sup>11</sup>, and before any person employed enters any steam boiler which is one of a range of two or more boilers<sup>12</sup>, all inlets through which steam or hot water might otherwise enter the boiler from any other part of the range must be disconnected from that part<sup>13</sup> or all valves or taps controlling such entry must be closed and securely locked<sup>14</sup>.

The hatch beams of any hatch in use for the operations, if not removed, must be adequately secured to prevent displacement<sup>15</sup>.

Bolts which have been jumped-up and re-screwed must not be used for securing plates on the sides of vessels<sup>16</sup>.

1 As to the meaning of 'vessel' see PARA 716 note 1.

2 As to the meaning of 'operations' see PARA 716 note 1.

3 As to the meaning of 'person employed' see PARA 716 note 13.

4 As to the meaning of 'required to proceed' see *Wenborn v Harland and Wolff Ltd* [1952] 1 Lloyd's Rep 255. See also *Henaghan v Rederiet Forangirene* [1936] 2 All ER 1426.

5 As to the meaning of 'harbour' see PARA 716 note 5.

6 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(1).

7 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(2). If the shipowner has given written notice to every contractor undertaking any of the operations for which the ship's permanent lighting is required that for a specified period, for reasons connected with the management or working of the ship or the use, repair or maintenance of its equipment, the permanent lighting will not be maintained in operation or only to a specified extent, the above provisions do not apply during that period or apply only to the extent that the



permanent lighting is maintained in operation: reg 69(2) proviso. 'Contractor' means a person who has contracted with the shipowner or his agent to carry out any of the operations; and 'shipowner' means the shipowner or master or officer in charge: reg 69(2). No person may be held not to have complied with the provisions of reg 69(1), (2), by reason only of a failure of the electricity supply, provided that sufficient and suitable alternative means of lighting are provided as soon as practicable: reg 69(3).

8 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(4). Such lamps must also be so constructed as to prevent, so far as practicable, the development of leaks: reg 69(4).

9 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(5) (amended by SI 1983/644). As to the 'Abel closed test' and the 'Pensky-Martens closed test' see PARA 716 note 1.

10 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 69(6).

11 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 70(1).

12 While persons employed remain in any such steam boiler, all relevant inlets must remain disconnected and all such valves or taps must remain closed and securely locked: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 70(3). No person employed may be allowed or required to enter or remain in, and no person may enter or remain in, any such steam boiler unless the provisions of reg 70(2) (see the text and notes 13-14) are being complied with: reg 70(4).

13 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 70(2)(a).

14 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 70(2)(b).

15 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 71.

16 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 72. No person employed may use such bolts for this purpose: reg 72.

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### **719. Training and safety supervision.**

Until he has been employed in a shipyard<sup>1</sup> for at least six months, no young person<sup>2</sup> may be employed in connection with the operations<sup>3</sup> in a shipyard on a stage<sup>4</sup> or any part of a ship where he is liable to fall more than 2 metres or into water in which there is a risk of drowning<sup>5</sup>.

In every shipyard (other than a public dry dock<sup>6</sup>) where more than 500 persons are employed regularly or from time to time, an experienced person must be appointed and employed exclusively to exercise general supervision of the observance of the regulations and to promote the safe conduct of the work generally<sup>7</sup>. Two or more employers may jointly appoint the same person or persons to perform some or all of these duties<sup>8</sup>.

1 As to the meaning of 'shipyard' see PARA 716 note 4; and as to the meanings of 'ship' and 'vessel' see PARA 716 note 1.

2 As to the meaning of 'young person' see PARA 316 note 1.

3 As to the meaning of 'operations' see PARA 716 note 1.

4 'Stage' means any temporary platform on or from which persons employed perform work in connection with the operations, but does not include a boatswain's chair: Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 3(2).

5 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 80(1) (amended by SI 1983/644). As to the application of the regulations see PARA 716.

6 As to the meaning of 'public dry dock' see PARA 716 note 13.

7 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 81(1).

8 Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932, reg 81(2).

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## **(4) OFFSHORE INSTALLATIONS**

### **(i) Design and Construction**

#### **720. Integrity of installations.**

The duty holder<sup>1</sup> must ensure that an installation<sup>2</sup> at all times possesses such integrity<sup>3</sup> as is reasonably practicable<sup>4</sup>; and the following provisions are without prejudice to the generality of this provision<sup>5</sup>.

The duty holder must ensure that:

1520 (1) the designs to which an installation is to be or in the event is constructed are such that, so far as is reasonably practicable:

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- 24. (a) it can withstand such forces acting on it as are reasonably foreseeable;
- 25. (b) its layout and configuration, including those of its plant, will not prejudice its integrity;
- 26. (c) fabrication, transportation, construction, commissioning, operation, modification, maintenance and repair of the installation may proceed without prejudicing its integrity;
- 27. (d) it may be decommissioned and dismantled safely; and
- 28. (e) in the event of reasonably foreseeable damage to the installation it will retain sufficient integrity to enable action to be taken to safeguard the health and safety of persons on or near it<sup>6</sup>;

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1521 (2) an installation is composed of materials which are suitable, having regard to the general requirement set out above<sup>7</sup> and, so far as is reasonably practicable, sufficiently proof against or protected from anything liable to prejudice its integrity<sup>8</sup>;

1522 (3) work of fabrication, construction, commissioning, modification, maintenance and repair of an installation, and activity in preparation for the positioning of an installation, are carried out in such a way that, so far as is reasonably practicable, its integrity is secured<sup>9</sup>;

1523 (4) the installation is not operated in such a way as may prejudice its integrity<sup>10</sup>;

1524 (5) the installation is not operated unless appropriate limits within which it is to be operated, and the environmental conditions<sup>11</sup> in which it may safely operate, have been recorded<sup>12</sup>;

1525 (6) a record of the matters described in head (5) above is kept on the installation, readily available to any person involved in its operation<sup>13</sup>;

1526 (7) the matters described in head (5) above are reviewed as often as may be appropriate<sup>14</sup>;

1527 (8) suitable arrangements are in place for maintaining the integrity of the installation, including suitable arrangements for periodic assessment of its integrity and the carrying out of remedial work in the event of damage or deterioration which may prejudice its integrity<sup>15</sup>;

- 1528 (9) within ten days after the appearance of evidence of a significant threat to the integrity of an installation, a report is made to the Health and Safety Executive<sup>16</sup> in writing identifying such threat and specifying any action taken or to be taken to avert it<sup>17</sup>;
- 1529 (10) an installation is decommissioned and dismantled in such a way that, so far as is reasonably practicable, it will possess sufficient integrity to enable such decommissioning and dismantlement to be carried out safely<sup>18</sup>.

1 For these purposes, 'duty holder' means (1) in relation to a fixed installation, the operator; and (2) in relation to a mobile installation, the owner: see the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1); and PARA 733 note 1 (definition applied by the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1)). Where a duty holder in relation to an installation is succeeded by a new duty holder, anything done in compliance with the 1996 regulations by the former duty holder in relation to the installation is to be treated, for the purpose of those regulations, as having been done by his successor: reg 2(3). As to the meaning of 'installation' see note 2.

2 For these purposes, 'installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3, except reg 3(3)(a), (b), (c)(ii) (see PARA 733 note 2): Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1). The definition of 'work equipment' in the Provision and Use of Work Equipment Regulations, SI 1998/2306 (see PARA 482 note 6), includes all equipment on offshore installations: *Spencer-Franks v Kellogg Brown & Root Ltd* [2008] UKHL 46, [2009] 1 All ER 269, [2008] ICR 863.

Subject to the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(2), (3) (provisions relating to wells in Great Britain: see PARA 733 note 2), the 1996 regulations apply (1) in Great Britain; and (2) to and in relation to installations, wells and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 4(1), (2)(b), 5 (see PARA 305): Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 3(1); Interpretation Act 1978 s 17(2).

Subject to the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 23(2) and to any of the provisions imposed by the European Union in respect of the encouragement of improvements in the safety and health of workers at work, the Health and Safety Executive may, by a certificate in writing, exempt any person, installation, well or class of persons, installations or wells from any requirement or prohibition imposed by the 1996 regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time: reg 23(1). The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and, in particular, to (a) the conditions, if any, which it proposes to attach to the exemption; and (b) any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 23(2). As to the meaning of 'well' see PARA 722 note 2. As to the Health and Safety Executive see PARA 361 et seq.

3 'Integrity' means structural soundness and strength, stability and, in the case of a floating installation, buoyancy in so far as they are relevant to the health and safety of persons: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

4 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 4(1). As to what is reasonably practicable see PARA 417.

5 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 4(2).

6 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 5(1). As to contravention of reg 5 see PARA 859 head (5).

7 Ie having regard to the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 4(1).

8 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 5(2).

9 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 6. As to contravention of reg 6 see PARA 859 head (5).

10 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 7(1). Any reference for these purposes to operating an installation is a reference to using it for any of the purposes

described in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(1) (see PARA 733 note 2); Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1), (2).

11 'Environmental conditions' means (1) meteorological and oceanological conditions; and (2) properties and configuration of the seabed and subsoil: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

12 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 7(2).

13 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 7(3).

14 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 7(4).

15 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 8(1). Regulation 8(1) does not, however, apply (1) to a fixed installation while its structure is not yet established at the location at which it is to be operated; or (2) to a mobile installation under construction which is not yet able to be moved: reg 8(2). 'Fixed installation' means an installation other than a mobile installation; and 'mobile installation' means an installation which can be moved from place to place without major dismantling or modification, whether or not it has its own motive power: reg 2(1) (definition of 'mobile installation' amended by SI 2005/3117).

16 As to the Health and Safety Executive see PARA 361 et seq.

17 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 9(1). Regulation 9(1) does not, however, apply to anything of which the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (see PARA 399 et seq) require a report to be made: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 9(2).

18 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 10.

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## **721. Further requirements relating to installations.**

The duty holder<sup>1</sup> must ensure that every helicopter landing area forming part of an installation<sup>2</sup> is large enough, and has sufficient clear approach and departure paths, to enable any helicopter intended to use the landing area safely to land thereon and to take off therefrom in any wind and weather conditions permitting helicopter operations, and is otherwise of a design and construction adequate for its purpose<sup>3</sup>.

The duty holder must ensure<sup>4</sup> that the additional prescribed requirements<sup>5</sup> are complied with in relation to an installation, while it is in use, unless in the case of any such requirement it would not prejudice the health, safety or welfare of any person if it were not complied with<sup>6</sup>. While there are persons on a fixed installation<sup>7</sup> which is being completed at the place where it is to be operated, or is being decommissioned or dismantled, the duty holder must ensure that such of the prescribed requirements<sup>8</sup> are complied with, and to such extent, as is reasonably practicable<sup>9</sup> in the circumstances<sup>10</sup>. These requirements apply without prejudice to the requirements of the other relevant statutory provisions relating to the installation<sup>11</sup>.

1 As to the meaning of 'duty holder' see PARA 720 note 1.

2 As to the meaning of 'installation' see PARA 720 note 2.

3 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 11.

4 In the case of an installation which was commissioned before the coming into force of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913 (ie 30 June 1996: see reg 1), it was sufficient compliance with reg 12(1) where the additional requirements were complied with in each case as soon as possible and no later than 3 November 1999: reg 12(3).

5 The additional requirements are those set out in the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, Sch 1 (amended by SI 2005/1093 and SI 2005/1643). The Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, Sch 1 (as so amended) sets out detailed requirements regarding (1) organisation of the installation; (2) ventilation of enclosed workplaces; (3) room temperature; (4) floors, walls and ceilings of rooms; (5) transparent or translucent surfaces; (6) roofs; (7) natural and artificial lighting; (8) windows and skylights; (9) doors and gates; (10) traffic routes; (11) danger areas; (12) room dimensions and air space in rooms; freedom of movement in the workstation; (13) rest rooms; (14) outdoor workplaces; (15) pregnant women and nursing mothers, who must be able to lie down to rest in appropriate conditions; (16) people with disabilities (the arrangement of an installation must take due account of the health, safety and welfare of any persons with disabilities who may work on it); (17) sanitary facilities; (18) showers and washing facilities; (19) lavatories and washbasins; (20) accommodation; and (21) noise and vibration of plant. These requirements are not set out in detail in this work.

6 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 12(1).

7 As to the meaning of 'fixed installation' see PARA 720 note 15.

8 Ie the requirements set out in the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, Sch 1: see note 5.

9 As to what is reasonably practicable see PARA 417.

10 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 12(2).

11 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 12(4).



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## **722. Requirements relating to wells.**

The well-operator<sup>1</sup> must ensure that a well<sup>2</sup> is so designed, modified, commissioned, constructed, equipped, operated, maintained, suspended and abandoned that so far as is reasonably practicable<sup>3</sup> there can be no unplanned escape of fluids from the well and that risks to the health and safety of persons from it or anything in it, or in strata to which it is connected, are as low as is reasonably practicable<sup>4</sup>.

Before the design of a well is commenced the well-operator must cause the geological strata and formations, and fluids within them, through which it may pass, and any hazards which such strata and formations may contain, to be assessed<sup>5</sup>.

The well-operator must ensure that:

- 1530 (1) account is taken of the assessment so required when the well is being designed and constructed<sup>6</sup>;
- 1531 (2) while an operation, including the drilling of the well, is carried out in relation to the well, those matters described above<sup>7</sup> must, so far as is reasonably practicable, be kept under review and that, if any change is observed in those matters, such modification is made, where appropriate, to the design and construction of the well, or to any procedures, as are necessary to ensure that the general purposes described above<sup>8</sup> will continue to be fulfilled<sup>9</sup>;
- 1532 (3) a well is so designed and constructed that, so far as is reasonably practicable, it can be suspended or abandoned in a safe manner and after its suspension or abandonment there can be no unplanned escape of fluids from it or from the reservoir to which it led<sup>10</sup>;
- 1533 (4) every part of a well is composed of material which is suitable for achieving the purposes<sup>11</sup> described above<sup>12</sup>;
- 1534 (5) before an operation in relation to a well, including the drilling of a well, is begun elsewhere than at a borehole site to which the Borehole Sites and Operations Regulations 1995 apply<sup>13</sup>, suitable well control equipment is provided for use during such operations to protect against blowouts<sup>14</sup>.

In the case of an operation to which head (5) above applies which is begun from an installation<sup>15</sup>, the duty holder<sup>16</sup>, and in the case of such an operation which is begun otherwise than from an installation, the well-operator must ensure that equipment provided pursuant to that head is deployed when the prevailing well and operational conditions so require<sup>17</sup>.

Before the design of a well is commenced or adopted the well-operator must make and put into effect arrangements relating to the well of a kind described below or, where such arrangements already have effect in relation to another well, apply such arrangements, with any appropriate modifications, to the well<sup>18</sup>. Those arrangements are arrangements in writing for such examinations, by independent<sup>19</sup> and competent persons, of any part of the well, or similar well, information, or work in progress, and the making of such reports and recommendations, as are suitable for ensuring, with the assistance of such other measures as the well-operator takes, that the well is so designed and constructed, and is maintained in such repair and condition, that:



- 1535 (a) so far as is reasonably practicable, there can be no unplanned escape of fluids from the well; and
- 1536 (b) risks to the health and safety of persons from it or anything in it, or in strata to which it is connected, are as low as is reasonably practicable<sup>20</sup>.

The well-operator must review and revise the arrangements as often as may be appropriate<sup>21</sup> and must ensure that the arrangements, any revision of them, and reports and recommendations pursuant to them are kept at an address in Great Britain notified to the Health and Safety Executive<sup>22</sup>, until the expiration of six months after the arrangements and any revision of them cease to be current<sup>23</sup>.

Where a drilling operation, a workover operation<sup>24</sup>, an abandonment operation, an operation consisting in the completion of a well or any other operation of a kind involving substantial risk of the unplanned escape of fluids from a well is being carried out on a well, the well-operator must cause to be sent to the Executive, at such intervals as may be agreed or, failing agreement, at intervals of one week calculated from its commencement, a report comprising the following information:

- 1537 (i) the identifying number, and any slot number, of the well;
- 1538 (ii) the name of any installation or vessel involved;
- 1539 (iii) a summary of the activity in the course of the operation since its commencement, or the previous report;
- 1540 (iv) the diameter and true vertical and measured depths of any hole drilled and any casing installed;
- 1541 (v) the drilling fluid density immediately before making the report; and
- 1542 (vi) in the case of an existing well, its current operational state<sup>25</sup>.

Every person who is, or is to be concerned, in whatever capacity, in an operation in relation to a well, including the drilling of a well, must co-operate with the well-operator so far as is necessary to enable him to discharge certain of his statutory duties<sup>26</sup>.

In the case of a drilling, well intervention<sup>27</sup> or workover operation to be carried out on a well from an installation, the duty holder, and in the case of such an operation to be carried out otherwise than from an installation, the well-operator, must ensure that the operation is not carried out, unless it is carried on in circumstances where the persons carrying out the operation have received such information, instruction and training, and are being so supervised, that the risk to health and safety from such operation is reduced to the lowest level that is reasonably practicable<sup>28</sup>.

1 'Well-operator', in relation to a well, means the person appointed by the licensee for a well to execute the function of organising and supervising all operations to be carried out by means of such well or, where no such person has been appointed, the licensee; and 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1) (definitions amended and added respectively by SI 2005/3117). Where a well-operator is succeeded by a new well-operator, anything done in compliance with the 1996 regulations by the former well-operator in relation to the well is to be treated, for the purpose of those regulations, as having been done by his successor: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(3). As to the meaning of 'well' see note 2.

2 'Well' means (1) a well made by drilling; and (2) a borehole drilled with a view to the extraction of minerals through it or another well, and is to be deemed to include any device on it for containing the pressure in it: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1). The 1996 regulations apply to a well in Great Britain, and activities in relation to it, only if (a) it is drilled from an installation; or (b) it is drilled with a view to the extraction of petroleum; and for these purposes, 'petroleum' means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but

does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: reg 3(2), (3). As to the application of the 1996 regulations see further PARA 720 note 2.

3 As to what is reasonably practicable see PARA 417.

4 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 13(1). The provisions of regs 14-19 and 21 (see the text and notes 5-26) are without prejudice to the generality of the requirements of reg 13(1) save that, where reg 17(2) places a duty on the duty holder for an installation, the well-operator is not under the same duty: reg 13(2).

5 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 14(1).

6 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 14(2).

7 le the matters described in the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 14(1).

8 le the purposes described in the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 13(1).

9 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 14(3).

10 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 15.

11 See note 8.

12 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 16.

13 le a borehole site to which the Borehole Sites and Operations Regulations 1995, SI 1995/2038, apply: see PARA 744.

14 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 17(1).

15 As to the meaning of 'installation' see PARA 720 note 2.

16 As to the meaning of 'duty holder' see PARA 720 note 1.

17 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 17(2). See also note 4.

18 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 18(1).

19 For these purposes, a person is to be regarded as independent only where (1) his examination will not involve the consideration by him of an aspect, of a thing liable to be examined, for which he bears or has borne such responsibility as might compromise his objectivity; and (2) he will be sufficiently independent of a management system, or of a part thereof, which bears or has borne any responsibility for an aspect, which he might consider, of a thing liable to be examined, to ensure that he will be objective in discharging his function: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 18(7).

20 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 18(2). In the case of a well which, at 30 June 1996, was completed, the well-operator was to make and put into effect or (as the case might be) apply the arrangements described in reg 18(1) within one year after that date: reg 18(5). In the case of a well, the design of which was commenced or adopted before that date, but which was not completed at that date, the well-operator was to make and put into effect or (as the case might be) apply the arrangements described in reg 18(1) either forthwith or within one year after such coming into force, in a case where a well consent was given not more than one year before such coming into force: reg 18(6). As to the meaning of 'well consent' for these purposes see reg 18(8).

21 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 18(3).

22 As to the Health and Safety Executive see PARA 361 et seq.

23 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 18(4).

24 'Workover operation' means an operation in which a well is re-entered for the purpose of maintaining or repairing it: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

25 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 19(1), (2).

26 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 20. The duties referred to in the text are his duties under regs 13(1) and 17; see the text and notes 1-4, 13-17.

27 'Well intervention operation' means an operation in which a well is re-entered for a purpose other than to continue drilling or to maintain or repair it: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

28 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 21.

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## **(ii) Safety Cases**

### **723. Notifications and safety cases for production installations.**

The operator<sup>1</sup> of a production installation<sup>2</sup> which is to be established must prepare a design notification<sup>3</sup> containing specified particulars<sup>4</sup> and send it to the Health and Safety Executive<sup>5</sup>, at such time before the submission of a field development programme<sup>6</sup> to the Department for Business, Enterprise and Regulatory Reform as will enable him to take account in the design of any matters relating to health and safety raised by the Executive within three months (or such shorter period as the Executive may specify) of that time<sup>7</sup>.

The operator of a production installation which is to be moved to a new location (whether from outside relevant waters or not) and operated<sup>8</sup> there must prepare a relocation notification<sup>9</sup> containing the specified particulars<sup>10</sup> not contained in any current safety case<sup>11</sup> for that installation and send it to the Executive, at such time before the submission of a field development programme to the Department for Business, Enterprise and Regulatory Reform as will enable him to take account of any matters relating to health and safety raised by the Executive within three months (or such shorter period as the Executive may specify) of that time<sup>12</sup>.

Subject to transitional provisions<sup>13</sup>, the operator of a production installation must ensure that it is not operated unless he has prepared a safety case containing specified particulars<sup>14</sup>, he has sent the safety case to the Executive at least six months (or such shorter period as the Executive may specify) before commencing the operation<sup>15</sup> and the Executive has accepted the safety case<sup>16</sup>.

A duty holder for an installation which is to be involved in a combined operation<sup>17</sup> must ensure that that installation does not engage in a combined operation unless a notification containing the specified particulars<sup>18</sup> (other than those already notified to the Executive<sup>19</sup>) in respect of that combined operation is sent to the Executive at least 21 days (or such shorter period as the Executive may specify) before it is due to commence<sup>20</sup>. Where there is a material change in any of the particulars so notified prior to completion of the relevant combined operation, the duty holder must notify the Executive of that change as soon as is practicable<sup>21</sup>, and where there is a change in the duty holder or of the installation, the duty holder must send a notification pursuant to these provisions<sup>22</sup>.

The operator<sup>23</sup> of a fixed installation<sup>24</sup> must ensure that it is not dismantled unless (1) he has prepared revisions to the current safety case containing the specified particulars<sup>25</sup> not contained in the current safety case for that installation; (2) he has sent a version of the current safety case which incorporates the proposed revisions, showing clearly where they are to be made, to the Executive at least three months (or such shorter period as the Executive may specify) before the commencement of the dismantling; and (3) the Executive has accepted those revisions to the current safety case<sup>26</sup>. Where there is a material change in any of the particulars notified prior to the Executive deciding whether to accept the proposed revisions to the current safety case, the operator must notify the Executive of that change as soon as practicable<sup>27</sup>.

The Executive may, by a certificate in writing, exempt any person, installation or well or class of persons, installations or wells from any requirement or prohibition imposed by the 2005

regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time<sup>28</sup>. The Executive must not grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption and any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it, and that the exemption will be compatible with the relevant European legislation<sup>29</sup>.

1 The 'operator', in relation to a production installation, is (1) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or (2) the licensee, where it is not clear to the Health and Safety Executive that one person has been appointed to perform the functions described in head (1) above or, in the opinion of the Executive, any person appointed to perform the functions described in head (1) above is incapable of performing those functions satisfactorily: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1639); 'petroleum' (a) includes any mineral oil or relative hydrocarbon and natural gas, whether or not existing in its natural condition in strata; and (b) does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and 'relevant waters' means (i) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and (ii) any area designated by order under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). As to the meaning of 'Great Britain' see PARA 305 note 7.

The licensee must (A) ensure that any operator appointed by him is capable of satisfactorily carrying out his functions and discharging his duties under the relevant statutory provisions; and (B) take all reasonable steps to ensure that any operator appointed by him carries out his functions and discharges his duties under the relevant statutory provisions: reg 5. 'Relevant statutory provisions' means the relevant statutory provisions (as defined in the Health and Safety at Work etc Act 1974 s 53(1) (see PARA 302 note 24) which apply to or in relation to installations or activities on or in connection with them: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). Any reference in those regulations to an activity in connection with an installation is a reference to any activity in connection with an installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, in or from a vessel or in any other manner, other than (aa) transporting, towing or navigating the installation; and (bb) any activity in or from a vessel which is ready to give assistance in the event of an emergency on or near the installation: reg 2(8). 'Vessel' includes a hovercraft and any floating structure which is capable of being staffed: reg 2(1).

2 'Production installation' means an installation which (1) extracts petroleum from beneath the sea-bed by means of a well; (2) stores gas in or under the shore or bed of relevant waters and recovers gas so stored; or (3) is used for the conveyance of petroleum by means of a pipe; and (a) includes a non-production installation (ie an installation other than a production installation) converted for use as a production installation for so long as it is so converted, a production installation which has ceased production for so long as it is not converted to a non-production installation and a production installation which has not come into use; and (b) does not include an installation which, for a period of no more than 90 days, extracts petroleum from beneath the sea-bed for the purposes of well testing: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (see PARA 733 note 2): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Well' means a well made by drilling and a borehole drilled with a view to the extraction of petroleum through it or another well, and is deemed to include any device on it for containing the pressure in it: reg 2(1).

3 Any reference in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, to a design notification, a relocation notification, a safety case or a notification of combined operations or well operations is a reference to a document containing the particulars specified in the Schedule referred to in the provision pursuant to which it is prepared and, for a safety case, reg 12: reg 2(2).

4 The particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 1. The particulars so specified are: (1) the name and address of the operator of the installation; (2) a description of the design process from an initial concept to the submitted design and the design philosophy used to guide the process; (3) a description of (a) the chosen design concept, including suitable diagrams, and a summary of the other design options which were considered; (b) how the chosen design concept is intended to ensure (i) compliance with the requirements set out in the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, regs 5, 10 (see PARA 720); and (ii) that risks with the potential to cause a major accident are reduced to the lowest level that is reasonably practicable; and (c) the criteria used to select the

chosen design concept and the process by which the selection was made; (4) a description of (a) the principal systems on the installation; (b) the installation layout; (c) the process technology to be used; (d) the principal features of any pipeline; (e) any petroleum-bearing reservoir intended to be exploited using the installation; and (f) the basis of design for any wells to be connected to the installation; (5) a suitable plan of the intended location of the installation and of anything which may be connected to it, and particulars of (a) the meteorological and oceanographic conditions to which the installation may foreseeably be subject; and (b) the properties of the sea-bed and subsoil at its location; (6) particulars of the types of operation, and activities in connection with an operation, which the installation may perform; (7) a general description of the means by which the management system of the operator will ensure that the structure and plant of the installation will be designed, selected, constructed and commissioned in a way which will control major accident risks to comply with the relevant statutory provisions; (8) a summary of the verification scheme prepared pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 19(2)(b) (see PARA 731); (9) where a non-production installation is to be converted for use as a production installation, an explanation of why the owner considers the installation suitable for conversion; (10) where a production installation is to be moved to a new location, an explanation of why the operator considers the installation suitable for the new location: Sch 1 paras 1-10. 'Major accident' means (i) a fire, explosion or the release of a dangerous substance involving death or serious personal injury to persons on the installation or engaged in an activity on or in connection with it; (ii) an event involving major damage to the structure of the installation or plant affixed thereto or any loss in the stability of the installation; (iii) the collision of a helicopter with the installation; (iv) the failure of life support systems for diving operations in connection with the installation, the detachment of a diving bell used for such operations or the trapping of a diver in a diving bell or other subsea chamber used for such operations; or (v) any other event arising from a work activity involving death or serious personal injury to five or more persons on the installation or engaged in an activity in connection with it: reg 2(1). 'Diving bell' means a compression chamber which is capable of being manned and is used or designed for use under the surface of water in supporting human life, being a chamber in which any occupant is or may be subject to a pressure of more than 300 millibars above atmospheric pressure during normal operations: reg 2(1). 'Pipeline' is to be construed in accordance with the Pipelines Safety Regulations 1996, SI 1996/825, reg 3 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 611): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Management system' means the organisation and arrangements established by a person for managing his undertaking; and 'owner' means the person who controls the operation of a non-production installation: reg 2(1). As to the meaning of 'verification scheme' see PARA 731 note 11. As to what is reasonably practicable see PARA 417.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 'Field development programme' means the support document for development and production authorisations to be submitted to the Department for Business, Enterprise and Regulatory Reform pursuant to the Guidance Notes on Procedures for Regulating Offshore Oil and Gas Field Developments, as published on the Department for Business, Enterprise and Regulatory Reform's website, and revised or reissued from time to time: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1) (amended by SI 2007/3224).

7 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 6(1) (amended by SI 2007/3224). The Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 6(1) only requires the particulars in the design notification to describe the matters referred to in that paragraph to the extent that it is reasonable to expect the duty holder to address them at the time of sending the design notification to the Executive: reg 6(2). 'Duty holder' means, in relation to a production installation, the operator and, in relation to a non-production installation, the owner: reg 2(1). Where a duty holder is succeeded by a new duty holder, anything done in compliance with the 2005 regulations by the duty holder in relation to an installation is, for the purposes of those regulations, to be treated as having been done by his successor: reg 2(9).

The 2005 regulations apply in Great Britain and to and in relation to installations and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 4(1), (2)(b), 5, 6 (see PARA 305): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 4(1). They do not apply to wells to which the Borehole Sites and Operations Regulations 1995, SI 1995/2038 (see PARA 744) apply: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 4(1).

8 Any reference in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, to operating an installation is a reference to using the installation for any of the purposes described in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(1)(a)-(d) (see PARA 733 note 2): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(3).

9 See note 3.

10 See note 4.

11 'Current safety case' means a safety case in respect of an installation which has been accepted by the Health and Safety Executive pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, or, subject to reg 27, the Offshore Installations (Safety Case) Regulations 1992, SI 1992/2885

(revoked), and includes any revision thereto which (1) may take effect without the acceptance of the Executive; or (2) has been accepted by the Executive: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1).

12 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 6(2) (amended by SI 2007/3224).

13 le subject to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 27.

14 le the particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12, Sch 2. The particulars to be so included are (Sch 2 paras 1-14):

- 2 (1) the name and address of the operator of the installation;
- 3 (2) a description of the extent to which the duty holder has taken into account any matters raised by the Executive pursuant to regs 6(1), (4)(a) and 9(1), (4) (see PARAS 723, 725);
- 4 (3) a summary of how any safety representatives for that installation were consulted with regard to the revision, review or preparation of the safety case pursuant to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(2)(c)(i) (see PARA 742 head (3)(a));
- 5 (4) a description, with suitable diagrams, of (a) the main and secondary structure of the installation and its materials; (b) its plant; (c) the layout and configuration of its plant; (d) the connections to any pipeline or installation; and (e) any wells connected or to be connected to the installation;
- 6 (5) a suitable plan of the location of the installation and of anything connected to it, and particulars of (a) the meteorological and oceanographic conditions to which the installation may foreseeably be subjected; and (b) the properties of the sea-bed and subsoil at its location;
- 7 (6) particulars of the types of operation, and activities in connection with an operation, which the installation is capable of performing;
- 8 (7) the maximum number of persons (a) expected to be on the installation at any time; and (b) for whom accommodation is to be provided;
- 9 (8) particulars of the plant and arrangements for the control of well operations, including those (a) to control pressure in a well; (b) to prevent the uncontrolled release of hazardous substances; and (c) to minimise the effects of damage to subsea equipment by drilling equipment;
- 10 (9) a description of any pipeline with the potential to cause a major accident, including (a) the fluid which it conveys; (b) its dimensions and layout; (c) its contained volume at declared maximum allowable operating pressure; and (d) any apparatus and works intended to secure safety, together with a summary of the document prepared under the Pipelines Safety Regulations 1996, SI 1996/825, reg 23 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 615);
- 11 (10) a description of how the duty holder has ensured, or will ensure, compliance with the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 4(1) (see PARA 743);
- 12 (11) a description of arrangements made for protecting persons on the installation from toxic gas at all times other than during any period while they may need to remain on the installation following an incident which is beyond immediate control;
- 13 (12) a description of the measures taken or to be taken or the arrangements made or to be made for the protection of persons on the installation from hazards of explosion, fire, heat, smoke, toxic gas or fumes during any period while they may need to remain on the installation following an incident which is beyond immediate control and for enabling such persons to be evacuated from the installation where necessary, including provision for (a) temporary refuge; (b) routes from locations where persons may be present to temporary refuge and for egress therefrom to points from where the installation may be evacuated; (c) means of evacuation at those points; and (d) facilities within temporary refuge for the monitoring and control of the incident and for organising evacuation;

- 14 (13) a description of the main requirements in the specification for the design of the installation and its plant, which must include (a) any limits for safe operation or use specified therein; (b) a description of how the duty holder has ensured, or will ensure, compliance with the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 4 (see PARA 720); (c) a description of how the duty holder has ensured, or will ensure, the suitability of the safety-critical elements; and (d) a description of how the duty holder (i) where he is also the operator in relation to a pipeline, has ensured, or will ensure, compliance with the Pipelines Safety Regulations 1996, SI 1996/825, reg 11 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 611); or (ii) where he is not also the operator in relation to a pipeline, has co-operated or will co-operate with the operator in relation to a pipeline to ensure compliance with reg 11;
- 15 (14) particulars of any combined operations which may involve the installation, including (a) a summary of the arrangements in place for co-ordinating the management systems of all duty holders involved in any such combined operation; (b) a summary of the arrangements in place for a joint review of the safety aspects of any such combined operation by all duty holders involved, which must include the identification of hazards with the potential to cause a major accident and the assessment of risks which may arise during any such combined operation; (c) the plant likely to be used during any such combined operation; and (d) the likely impact any such combined operation may have on the installations involved.

As to reg 12 see PARA 726. 'Well operation' means (A) the drilling of a well, including the recommencement of drilling after a well has been completed, suspended or abandoned by plugging at the sea-bed; and (B) any operation in relation to a well during which there may be an accidental release of fluids from that well which could give rise to the risk of a major accident: reg 2(1). As to the meaning of 'safety-critical elements' see PARA 731 note 3. 'Operator', in relation to a pipeline, means (aa) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline; (bb) until that person is known (should there be a case where at a material time he is not yet known) the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or (cc) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it: reg 2(1).

15 For the purposes of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, regs 2(4) (see note 17) and 7(1), the operation of an installation is to be treated as commenced (1) on the commencement of the first well drilling operation from the installation which may involve the release of petroleum from beneath the sea-bed; or (2) when petroleum is brought onto the installation for the first time through a pipeline or well, whichever is earlier: reg 7(2).

16 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 7(1). A safety case prepared pursuant to reg 7(1) and revisions to a current safety case prepared pursuant to reg 9(5) (see PARA 725 text and notes 19-22) may be prepared in relation to more than one production installation where the Executive so approves in writing and, where a safety case is or revisions are to be so prepared in relation to installations with different operators, it is sufficient compliance with reg 7(1)(a), (b) and reg 9(5)(a) and (b) if the operators prepare and agree a safety case or revisions containing the particulars referred to in those provisions and one of them sends it to the Executive in accordance with regs 7(1)(b) and 9(5)(b): reg 7(3).

Where there is a material change in any of the particulars notified pursuant to reg 6(1) prior to the duty holder sending a safety case to the Executive in accordance with reg 7(1)(b) or pursuant to reg 6(2) prior to the duty holder sending a safety case to the Executive in accordance with reg 7(1)(b) or sending revisions to the current safety case to the Executive in accordance with reg 14(2) (see PARA 724), the duty holder must notify the Executive of that change as soon as practicable: reg 6(4). 'Notified' means notified in writing, and related expressions are to be construed accordingly: reg 2(1).

17 An installation other than a production installation, the operation of which has not been treated as having commenced in accordance with reg 7(2) (see note 15), is to be treated as engaged in a combined operation with another such installation or other such installations if an activity carried out from, by means of or on, that installation is carried out temporarily for a purpose related to the other installation or installations and could affect the health or safety of persons on the other installation or installations, and the expression 'combined operation' is to be construed accordingly: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(4).

18 In the particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 4. The particulars to be so included are: (1) the name and address of each duty holder preparing the notification and a confirmation that every such duty holder has agreed to the contents of the notification; (2) a description of how the management systems for the installations involved in the combined operation will be co-ordinated so as to reduce the risks from a major accident to comply with the relevant statutory provisions; (3) particulars of any plant to be used in connection with the combined operation but which is not described in the current safety case for any of the installations involved in the combined operation; (4) a summary of the joint



review referred to in Sch 2 para 14(b) (see note 14 head (14)) or Sch 3 para 13(b) (see PARA 725 note 6 head (13)(b)), which must include (a) a description of any activities during the combined operation which may involve hazards with the potential to cause a major accident on or in connection with an installation; and (b) a description of any risk control measures introduced as a result of that review; (5) a description of the combined operation and a programme of work, which shall include the dates on which the combined operation is expected to commence and finish: Sch 4 paras 1-5.

19    le pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 17: see PARA 728.

20    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 10(1). The requirements of reg 10(1) will be satisfied if (1) the duty holders for every installation involved in the combined operation prepare and agree a notification containing the particulars specified in reg 10(1); and (2) one of them sends it to the Executive at least 21 days (or such shorter period as the Executive may specify) before it is due to commence: reg 10(2).

21    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 10(3).

22    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 10(4).

23    For these purposes, 'operator', in relation to a fixed installation, means (1) the person appointed by the licensee to manage and control directly or by any other person the execution of dismantling a fixed installation; or (2) the licensee, where (a) it is not clear to the Executive that one person has been appointed to perform the functions described in head (1) above; or (b) in the opinion of the Executive, any person appointed to perform the functions specified in head (1) above is incapable of performing those functions satisfactorily: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 11(4). As to the meaning of 'dismantling' see note 24.

24    'Fixed installation' means an installation which cannot be moved from place to place without major dismantling or modification, whether or not it has its own motive power: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Dismantling' means the dismantling or removal of the main and secondary structure of a fixed installation at the place at which it was operated, and 'dismantled' is to be construed accordingly: reg 2(1).

25    le the particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12, Sch 5. The particulars to be so included are (1) the name and address of the operator of the installation; (2) the dates on which dismantling is expected to commence and finish; (3) a summary of how any safety representatives for that installation were consulted with regard to the revision of the safety case pursuant to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(2)(c)(i) (see PARA 742); (4) the maximum number of persons expected to be on the installation at any time during its dismantling; (5) a description of how the duty holder will comply with the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 4(1) (see PARA 743) with regard to the dismantling of the installation; (6) a description of arrangements made for protecting persons on the installation from toxic gas at all times other than during any period while they may need to remain on the installation following an incident which is beyond immediate control; (7) a description of how the proposed arrangements, methods and procedures for dismantling the installation and connected pipelines take adequate account of the design and method of construction of the installation and its plant: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 5 paras 1-7.

26    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 11(1). This only require the particulars in the proposed revisions to the current safety case to describe the matters referred to in reg 11(1) to the extent that it is reasonable to expect the operator to address them at the time of sending the proposed revisions to the Executive: reg 11(2).

27    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 11(2).

28    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 23(1).

29    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 23(2). The EU legislation referred to is EC Council Directive 92/91 (OJ L348, 28.11.1992, p 9) concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, art 3(2).

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#### **724. Review of safety case.**

A duty holder<sup>1</sup> must thoroughly review a current safety case<sup>2</sup> when directed to do so by the Health and Safety Executive<sup>3</sup>. In the absence of such a direction, a duty holder must thoroughly review a current safety case within five years of the date on which the Executive accepted that current safety case and the date of the previous review<sup>4</sup>. A duty holder must send a summary of each such review to the Executive (1) where the review is conducted at the direction of the Executive, within such reasonable time, being a period of not less than 28 days of the direction, as may be specified by the Executive; or (2) in all other cases, within 28 days of its conclusion<sup>5</sup>.

In addition to the other occasions on which a duty holder must revise a current safety case, a duty holder must revise a current safety case when appropriate and when directed to do so<sup>6</sup> by the Executive<sup>7</sup>. Revisions made without a direction by the Executive which make a material change<sup>8</sup> to the current safety case are not effective unless (a) the duty holder has sent a version of the current safety case which incorporates the proposed revisions, showing clearly where they are to be made, to the Executive at least three months, or such shorter period as the Executive may specify or, where the revisions relate to a combined operation<sup>9</sup>, at least six weeks, or such shorter period as the Executive may specify, before the revisions are to be made; and (b) the Executive has accepted the revisions<sup>10</sup>.

The Executive may direct a duty holder to prepare revisions to a current safety case in relation to such matters as the Executive may notify to him<sup>11</sup>. When making a direction for these purposes, the Executive must explain why it believes that each revision is necessary and must specify a period, not being less than 28 days, within which the duty holder must submit such revisions to the Executive<sup>12</sup>. Revisions submitted pursuant to this requirement are not effective unless the duty holder has sent a version of the current safety case which incorporates the proposed revisions, showing clearly where they are to be made, to the Executive and the Executive has accepted the revisions<sup>13</sup>.

After the submission of a design notification<sup>14</sup> and prior to the submission of a safety case in respect of a production installation, the duty holder for that installation must provide the Executive with a copy of any document which, in the opinion of the Executive, may be directly or indirectly relevant to the duty holder's preparation of the safety case for that installation within such reasonable time of the demand, being a period of not less than 14 days, as may be specified by the Executive<sup>15</sup>.

The Executive may suspend any current safety case where it does not accept any proposed revision thereto submitted<sup>16</sup> to it<sup>17</sup>. When suspending a current safety case, the Executive must explain why it believes that a suspension is necessary<sup>18</sup>. During any period in which the current safety case for an installation is suspended, the duty holder for that installation must ensure that it is not operated<sup>19</sup>. The Executive may lift any suspension in respect of a current safety case when it is satisfied that the health and safety of persons who are likely to be affected by the lifting of any suspension will not be prejudiced in consequence of it<sup>20</sup>.

1 As to the meaning of 'duty holder' see PARA 723 note 7.

2 As to the meaning of 'current safety case' see PARA 723 note 11; as to the meaning of 'safety case' see PARA 723 note 3; and as to the meaning of 'installation' PARA 723 note 2. As to the Health and Safety Executive see PARA 361 et seq.

- 3 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 13(1). As to the application of the regulations and exemptions from them see PARA 723.
- 4 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 13(2).
- 5 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 13(3).
- 6 le pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(1): see the text to note 11.
- 7 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 14(1).
- 8 Without prejudice to the generality of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 14(2), no well operation constitutes a material change and no revision prepared or made pursuant to reg 27 (transitional provisions) constitutes a material change, but the movement of a production installation to a new location to be operated there does constitute a material change and the conversion of a production installation to enable it to be operated as a non-production installation does constitute a material change, to the current safety case for the purposes of reg 14(2): reg 14(3). As to the meaning of 'well operation' see PARA 723 note 14; as to the meaning of 'production installation' and 'non-production installation' see PARA 723 note 2; and as to the meaning of 'operated' see PARA 723 note 8.
- 9 As to the meaning of 'combined operation' see PARA 723 note 17.
- 10 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 14(2).
- 11 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(1).
- 12 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(2).
- 13 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(3).
- 14 le as required under the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 6 or reg 9: see PARAS 723, 725. As to the meaning of 'design notification' see PARA 723 note 3.
- 15 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(4).
- 16 le pursuant to the to Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(3) or reg 27(2).
- 17 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(5).
- 18 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(6).
- 19 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(7). As to the meaning of 'operated' see PARA 723 note 8.
- 20 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(8).

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## 725. Safety case for non-production installations.

The owner<sup>1</sup> of a non-production installation<sup>2</sup> must ensure that it is not moved in relevant waters<sup>3</sup> with a view to its being operated<sup>4</sup> there unless (1) he has prepared a safety case<sup>5</sup> containing the specified particulars<sup>6</sup>; (2) he has sent the safety case to the Health and Safety Executive<sup>7</sup> at least three months (or such shorter period as the Executive may specify) before the movement of the installation in those waters with a view to its being operated there; and (3) the Executive has accepted the safety case<sup>8</sup>.

Where a non-production installation is to be converted to enable it to be operated as a production installation<sup>9</sup>, the owner must prepare a design notification<sup>10</sup> in respect of the proposed conversion containing the specified particulars<sup>11</sup> not contained in any current safety case<sup>12</sup> for that installation and send the design notification to the Executive, at such time before completion of the design of the proposed conversion as will enable him to take account in the design of any matters relating to health and safety raised by the Executive within three months (or such shorter period as the Executive may specify) of that time<sup>13</sup>. Where there is a material change in any of the particulars notified<sup>14</sup> prior to the duty holder<sup>15</sup> sending a safety case to the Executive<sup>16</sup> or sending revisions to the current safety case to the Executive<sup>17</sup> the duty holder must notify the Executive of that change as soon as practicable<sup>18</sup>.

Where a non-production installation operated pursuant to a current safety case is converted to a production installation, the operator<sup>19</sup> of that production installation must ensure that it is not operated as a production installation unless (a) he has prepared revisions to the current safety case for that installation containing the specified particulars<sup>20</sup> not contained in that current safety case; (b) he has sent a version of the current safety case which incorporates the proposed revisions, showing clearly where they are to be made, to the Executive at least three months (or such shorter period as the Executive may specify) before commencing the operation<sup>21</sup>; and (c) the Executive has accepted those revisions to the current safety case<sup>22</sup>.

1 As to the meaning of 'owner' see PARA 723 note 4.

2 As to the meaning of 'non-production installation' see PARA 723 note 2.

3 As to the meaning of 'relevant waters' see PARA 723 note 1.

4 As to the meaning of 'operated' see PARA 723 note 8.

5 As to the meaning of 'safety case' see PARA 723 note 3.

6 As specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12, Sch 3. The particulars to be included in a safety case for a non-production installation are (1) the name and address of the owner of the installation; (2) a summary of how any safety representatives for that installation were consulted with regard to the revision, review or preparation of the safety case pursuant to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(2)(c)(i) (see PARA 742); (3) a description, with suitable diagrams, of (a) the main and secondary structure of the installation and its materials; (b) its plant; and (c) the layout and configuration of its plant; (4) particulars of the types of operation, and activities in connection with an operation, which the installation is capable of performing; (5) the maximum number of persons (a) expected to be on the installation at any time; and (b) for whom accommodation is to be provided; (6) particulars of the plant and arrangements for the control of well operations, including those (a) to control pressure in a well; (b) to prevent the uncontrolled release of hazardous substances; and (c) to minimise the effects of damage to subsea equipment by drilling equipment; (7) a description of how the duty holder has ensured, or will ensure, compliance with the Offshore Installations (Prevention of Fire and Explosion, and

Emergency Response) Regulations 1995, SI 1995/743, reg 4(1) (see PARA 743); (8) a description of arrangements made for protecting persons on the installation from toxic gas at all times other than during any period while they may need to remain on the installation following an incident which is beyond immediate control; (9) a description of the measures taken or to be taken or the arrangements made or to be made for the protection of persons on the installation from hazards of explosion, fire, heat, smoke, toxic gas or fumes during any period while they may need to remain on the installation following an incident which is beyond immediate control and for enabling such persons to be evacuated from the installation where necessary, including provision for (a) temporary refuge; (b) routes from locations where persons may be present to temporary refuge and for egress therefrom to points from where the installation may be evacuated; (c) means of evacuation at those points; and (d) facilities within temporary refuge for the monitoring and control of the incident and for organising evacuation; (10) a description of the main requirements in the specification for the design of the installation and its plant, which must include (a) any limits for safe operation or use specified therein; (b) a description of how the duty holder has ensured, or will ensure, compliance with the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 SI 1996/913, reg 4 (see PARA 720); and (c) a description of how the duty holder has ensured, or will ensure, the suitability of the safety-critical elements; (11) particulars of (a) the limits of the environmental conditions beyond which the installation cannot safely be stationed or operated; (b) the properties of the sea-bed and subsoil which are necessary for the safe stationing and operation of the installation; and (c) the locations in which the installation may be stationed and operated safely; (12) a description of the arrangements for (a) identifying the routes and locations of pipelines, wells and other subsea equipment; and (b) assessing the risks that they pose to the installation; (13) particulars of any combined operations which may involve the installation, including (a) a summary of the arrangements in place for co-ordinating the management systems of all duty holders involved in any such combined operation; (b) a summary of the arrangements in place for a joint review of the safety aspects of any such combined operation by all duty holders involved, which shall include the identification of hazards with the potential to cause a major accident and the assessment of risks which may arise during any such combined operation; (c) the plant likely to be used during any such combined operation; and (d) the likely impact any such combined operation may have on the installations involved: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 3 paras 1-13. As to reg 12 see PARA 726. As to the meaning of 'in connection with' see PARA 723 note 1. As to the meaning of 'well operation' see PARA 723 note 14; and as to the meaning of 'well' see PARA 723 note 2. As to the meaning of 'combined operation' see PARA 723 note 17. As to the meanings of 'pipeline', 'major accident' and 'management system' see PARA 723 note 4; and as to the meaning of 'safety-critical elements' see PARA 731 note 3.

7 As to the Health and Safety Executive see PARA 361 et seq.

8 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 8. This is subject to the transitional provisions of reg 27: reg 8. As to the application of the regulations and exemptions from them see PARA 723.

9 As to the meaning of 'production installation' see PARA 723 note 2.

10 As to the meaning of 'design notification' see PARA 723 note 3.

11 I.e. the particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 1: see PARA 723 note 4. The particulars specified in Sch 1 which must be provided in respect of a design notification under reg 9(1) must be construed as if all references to 'operator' were references to the owner of the non-production installation to be converted: reg 9(2).

12 As to the meaning of 'current safety case' see PARA 723 note 11.

13 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 9(1). This only requires the particulars in the design notification to address the matters referred to above to the extent that it is reasonable to expect the duty holder to address them at the time of sending the design notification to the Executive: reg 9(3).

14 As to the meaning of 'notified' see PARA 723 note 16.

15 As to the meaning of 'duty holder' see PARA 723 note 7.

16 I.e. in accordance with the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 7(1): see PARA 723 notes 13-16.

17 I.e. in accordance with the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 9(5): see the text and notes 19-22.

18 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 9(4).

19 As to the meaning of 'operator' see PARA 723 note 1.

20     le the particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12, Sch 2: see PARAS 726, 723 note 14 respectively.

21     le in accordance with the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 7(2): see PARA 723 note 15.

22     Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 9(5).

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Management of health and safety and control of major accident hazards.

## **726. Management of health and safety and control of major accident hazards.**

The duty holder<sup>1</sup> who prepares a safety case<sup>2</sup> pursuant to the Offshore Installations (Safety Case) Regulations 2005<sup>3</sup> must include in the safety case sufficient particulars to demonstrate that (1) his management system<sup>4</sup> is adequate to ensure that the relevant statutory provisions<sup>5</sup> will, in respect of matters within his control, be complied with and to ensure the satisfactory management of arrangements with contractors and sub-contractors; (2) he has established adequate arrangements for audit<sup>6</sup> and for the making of reports thereof; (3) all hazards with the potential to cause a major accident<sup>7</sup> have been identified; and (4) all major accident risks have been evaluated and measures have been, or will be, taken to control those risks to ensure that the relevant statutory provisions will be complied with<sup>8</sup>.

1 As to the meaning of 'duty holder' see PARA 723 note 7.

2 As to the meaning of 'safety case' see PARA 723 note 3.

3 As to the application of the regulations and exemptions from them see PARA 723.

4 As to the meaning of 'management system' see PARA 723 note 4.

5 As to the meaning of 'relevant statutory provisions' see PARA 723 note 1.

6 For these purposes, 'audit' means systematic assessment of the adequacy of the management system to achieve the purpose referred to in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12(1)(a) (see head (1) in the text) carried out by persons who are sufficiently independent of the system (but who may be employed by the duty holder) to ensure that such assessment is objective: reg 12(3).

7 As to the meaning of 'major accident' see PARA 723 note 4.

8 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12(1). This only requires the particulars in the safety case to demonstrate the matters referred to above to the extent that it is reasonable to expect the duty holder to address them at the time of sending the safety case to the Health and Safety Executive: reg 12(2). As to the Health and Safety Executive see PARA 361 et seq.

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## **727. Duty to conform with safety case.**

The duty holder<sup>1</sup> must ensure that the procedures and arrangements described in the current safety case<sup>2</sup> which may affect health or safety are followed<sup>3</sup>.

In criminal proceedings for a contravention of this duty, it is a defence for the accused to prove that (1) in the particular circumstances of the case, it was not in the best interests of the health and safety of persons to follow the procedures or arrangements concerned and there was insufficient time to revise the safety case<sup>4</sup>; or (2) the commission of the offence was due to a contravention by another person of the duty of co-operation<sup>5</sup> and the accused had taken all reasonable precautions and exercised all due diligence to ensure that the procedures or arrangements were followed<sup>6</sup>.

<sup>1</sup> As to the meaning of 'duty holder' see PARA 723 note 7.

<sup>2</sup> As to the meaning of 'safety case' see PARA 723 note 3; and as to the meaning of 'current safety case' see PARA 723 note 11.

<sup>3</sup> Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 16(1). As to the application of the regulations and exemptions from them see PARA 723.

<sup>4</sup> I.e. pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 14: see PARA 724.

<sup>5</sup> I.e. under the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 8 (see PARA 737).

<sup>6</sup> Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 16(2). As to offences and penalties see generally PARA 852 et seq.



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## 728. Notification of well operations and construction activities.

A well operator<sup>1</sup> must ensure that no well operation<sup>2</sup> is commenced unless he has sent a notification<sup>3</sup> containing the specified particulars<sup>4</sup> to the Health and Safety Executive<sup>5</sup> at least 21 days (or such shorter period as the Executive may specify) before commencing that operation<sup>6</sup>. In the case of a production installation<sup>7</sup> a well operator must ensure that (1) no well operation which involves insertion of a hollow pipe in the well or altering the construction of the well, is commenced unless he has sent a notification containing the specified particulars<sup>8</sup> to the Executive at least ten days (or such shorter period as the Executive may specify) before commencing that operation; and (2) no well operation which involves drilling is commenced unless he has sent a notification containing the specified particulars to the Executive at least 21 days (or such shorter period as the Executive may specify) before commencing that operation<sup>9</sup>. Where there is a material change in any of the particulars notified<sup>10</sup> prior to completion of the relevant well operation, the well operator must notify the Executive of that change as soon as practicable<sup>11</sup>.

1 'Well operator', in relation to a well or proposed well, means (1) the person appointed by the licensee for that well or proposed well to execute the function of organising and supervising the drilling of that well and all operations to be carried out by means of that well; or (2) where no such person has been appointed, the licensee: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). As to the meaning of 'well' see PARA 723 note 2; and as to the meaning of 'licensee' see PARA 723 note 1.

2 As to the meaning of 'well operation' see PARA 723 note 14.

3 As to the meaning of 'notification' see PARA 723 note 3.

4 The particulars specified in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 6. Those particulars are (1) the name and address of the well operator; (2) where the well operation is to be carried out (a) from an installation, the name of the installation and the name and address of the duty holder for that installation; or (b) by means of a vessel, the name of that vessel; (3) particulars of the fluids to be used to control the pressure of the well; (4) particulars of any plant, not described in the current safety case for the installation, which is to be used in connection with the well operation; (5) particulars of the type of well, its number, and slot number, and the name of any field development of which it may be part; (6) a description of the well operation and a programme of works which includes the date on which each well operation is expected to commence and finish and the intended operational state of the well at the end of each well operation; (7) a description of (a) any activities on or in connection with an installation or a vessel during the well operation described pursuant to head (6) above which may involve any hazards with the potential to cause a major accident; and (b) such hazards; (8) in the case of a well which is to be drilled (a) particulars, with suitable diagrams, of (i) the location of the top of the well; (ii) the directional path of the well-bore; (iii) its terminal depth and location; and (iv) its position, and that of nearby wells, relative to each other; (b) particulars of the geological strata and formations, and of fluids within them, through which it will pass, and of any hazards with the potential to cause a major accident which they may contain; (c) the procedures for effectively monitoring the direction of the well-bore, and for minimising the likelihood and effects of intersecting nearby wells; and (d) a description of the design of the well, including the limits on its safe operation and use; (9) in the case of an existing well, (a) a diagram of the well; (b) a summary of earlier operations in relation to it; (c) the purposes for which it has been used; (d) its current operational state; (e) its state of repair; (f) the physical conditions within it; and (g) its production capacity; (10) where a well operation is to be carried out by means of a non-production installation or a vessel (a) particulars of (i) the meteorological and oceanographic conditions to which that installation or, as the case may be, vessel may foreseeably be subjected; (ii) the depth of water; and (iii) the properties of the sea-bed and subsoil at the location at which the well operation will be carried out; and (b) a description of how the well operator and (i) the owner of the installation; or (ii) the operator and owner of the vessel involved in the well operation will co-ordinate their management systems so as to reduce the risks from a major accident to comply with the relevant statutory provisions: Sch 6 paras 1-10. As to the meaning of 'installation' see PARA 723 note 2. As to the meaning of 'duty holder' see PARA 723 note 7. As to the meaning of

'vessel' see PARA 723 note 1. As to the meaning of 'current safety case' see PARA 723 note 11; and as to the meaning of 'safety case' see PARA 723 note 3. As to the meaning of 'in connection with' see PARA 723 note 1. As to the meaning of 'major accident' see PARA 723 note 4. As to the meaning of 'non-production installation' see PARA 723 note 2. As to the meaning of 'owner' see PARA 723 note 4. As to the meaning of 'operator' see PARA 723 note 1. As to the meaning of 'management system' see PARA 723 note 4. As to the meaning of 'relevant statutory provisions' see PARA 723 note 1.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 17(1). As to the application of the regulations and exemptions from them see PARA 723.

7 As to the meaning of 'production installation' see PARA 723 note 2.

8 See note 3.

9 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 17(2).

10 As to the meaning of 'notified' see PARA 723 note 16.

11 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 17(3). As to what is practicable see PARA 417.

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## 729. Keeping of documents.

A duty holder<sup>1</sup> must:

- 1543 (1) ensure that, when he sends the design notification<sup>2</sup>, in the case of a production installation<sup>3</sup> or the safety case<sup>4</sup>, in the case of a non-production installation<sup>5</sup>, to the Health and Safety Executive<sup>6</sup>, it is notified<sup>7</sup> of an address in Great Britain<sup>8</sup> for the purposes of heads (2) and (5) below;
- 1544 (2) keep copies, at the address referred to in head (1) above and on the installation, of the following documents relating to the installation: (a) the current safety case; (b) any summary of any review of the current safety case<sup>9</sup>; and (c) each audit report<sup>10</sup>;
- 1545 (3) keep copies on the installation of the following documents relating to the installation: (a) any relocation notification<sup>11</sup> and any material changes thereto; (b) any notification of combined operations<sup>12</sup> and any material changes thereto; and (c) any notification of well operations<sup>13</sup> and any material changes thereto;
- 1546 (4) ensure that, in respect of each audit report, a written statement is made, recording (a) the main findings of the report; (b) the recommendations in the report; and (c) the action proposed to implement those recommendations, including the timescales involved, and a copy of that statement is kept on the installation; and
- 1547 (5) ensure that a record is made of any action taken in consequence of an audit report, and a copy of that record is kept at the address referred to in head (1) above and on the installation<sup>14</sup>.

The copy of the current safety case referred to above and any other relevant documents must be kept for so long as they are current, and the copy of the audit report, the written statement and the record must be kept for a period of three years after being made<sup>15</sup>.

The duty holder for an installation must ensure that (i) its verification scheme<sup>16</sup>, any modification of that scheme and any note made of any expressed reservation<sup>17</sup> is kept at the address notified to the Executive pursuant head (1) above until the expiration of six months after such scheme or, as the case may be, modification of that scheme, has ceased to be current; and (ii) records, sufficient to show that specified matters<sup>18</sup> are kept at the address notified to the Executive pursuant to head (1) above until the expiration of six months after the scheme pursuant to which they were compiled has ceased to be current<sup>19</sup>.

1 As to the meaning of 'duty holder' see PARA 723 note 7.

2 As to the meaning of 'design notification' see PARA 723 note 3.

3 As to the meaning of 'production installation' see PARA 723 note 2.

4 As to the meaning of 'safety case' see PARA 723 note 3.

5 As to the meaning of 'non-production installation' see PARA 723 note 2.

6 As to the Health and Safety Executive see PARA 361 et seq.

7 As to the meaning of 'notified' see PARA 723 note 16.

8 As to the meaning of 'Great Britain' see PARA 305 note 7.

9 Is prepared pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 13(2): see PARA 724. As to the meaning of 'current safety case' see PARA 723 note 11.

10 For these purposes, 'audit report' means a report made pursuant to the arrangements referred to in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 12(1)(b) (see PARA 726 head (2)): reg 18(4).

11 As to the meaning of 'relocation notification' see PARA 723 note 3.

12 As to the meaning of 'combined operation' see PARA 723 note 17. As to the meaning of 'notification of combined operations' see PARA 723 note 3.

13 As to the meaning of 'notification of well operations' see PARA 723 note 3. As to the meaning of 'well operation' see PARA 723 note 14; and as to the meaning of 'well' see PARA 723 note 2.

14 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 18(1). As to the application of the regulations and exemptions from them see PARA 723. As to storage of information by electronic means see PARA 730.

15 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 18(2).

16 As to the meaning of 'verification scheme' see PARA 731 note 11.

17 Is pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 19(2)(c) or 20(b): see PARA 731.

18 Is the matters described in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 7 para 5: see PARA 731 note 12 head (5).

19 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 18(3).

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Communication and storage of information by electronic means.

### **730. Communication and storage of information by electronic means.**

Where the Offshore Installations (Safety Case) Regulations 2005<sup>1</sup> require or allow a person to communicate information to another, whether in writing or otherwise, that person may generally communicate such information by electronic means<sup>2</sup>. Information communicated by electronic means is not to be treated as having been received by the recipient for the purposes of those regulations unless the recipient (1) has agreed to receive that information by electronic means by providing the sender with an address to which that information may be sent; (2) is able to read and print that information; and (3) is able to store that information in a form with which the sender cannot interfere<sup>3</sup>.

In the absence of a clear indication to the contrary, information communicated by electronic means in accordance with, and for the purposes of, the 2005 regulations is deemed (a) to be accurately dated and timed; (b) to have been sent by the person from whom it purports to originate; (c) not to have been tampered with or otherwise modified; and (d) where relevant, to be intended to have legal effect<sup>4</sup>.

Where the 2005 regulations require any person to record, note or store information, it may be recorded, noted or stored on film or by electronic means if it (i) can be reproduced (in the case of information recorded, noted or stored on film, at the place at which it is recorded, noted or stored) as a written copy; and (ii) is reasonably secure from loss or unauthorised interference<sup>5</sup>.

1    le the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117.

2    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 3(1). These provisions do not apply to reg 22(2) (see PARA 731 text and note 18): reg 3(5). As to the application of the regulations and exemptions from them see PARA 723.

3    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 3(2).

4    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 3(3).

5    Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 3(4).

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### **731. Verification schemes for safety-critical elements.**

The duty holder<sup>1</sup> for an installation<sup>2</sup> must ensure that a record of the safety-critical elements<sup>3</sup> and the specified plant<sup>4</sup> is made<sup>5</sup>. After such a record has been made, the duty holder must ensure that, in the case of a production installation<sup>6</sup>, before completion of its design and, in the case of a non-production installation<sup>7</sup>, before it is moved into relevant waters<sup>8</sup> with a view to its being operated<sup>9</sup> there, (1) comment on that record by an independent<sup>10</sup> and competent person is invited; (2) a verification scheme<sup>11</sup> providing for specified matters<sup>12</sup> is drawn up by or in consultation with such person; (3) a note is made of any reservation expressed by such person as to the contents of that record or that scheme; and (4) that scheme is put into effect<sup>13</sup>.

The duty holder must ensure that, as often as may be appropriate, the verification scheme for his installation is reviewed and, where necessary, revised or replaced by or in consultation with an independent and competent person and that a note is made of any reservation expressed by such person in the course of drawing it up<sup>14</sup>.

The duty holder must ensure that effect continues to be given to the verification scheme for his installation, or any revision or replacement of it, while that installation remains in being<sup>15</sup>.

In any proceedings for an offence for a contravention of any of the above provisions<sup>16</sup> it is a defence for the person charged to prove (a) that the commission of the offence was due to the act or default of another person not being one of his employees (the 'other person'); and (b) that he took all reasonable precautions, and exercised all due diligence, to avoid the commission of the offence<sup>17</sup>. The person charged may not, without the leave of the court, be entitled to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession<sup>18</sup>.

1 As to the meaning of 'duty holder' see PARA 723 note 7.

2 As to the meaning of 'installation' see PARA 723 note 2.

3 'Safety-critical elements' means such parts of an installation and such of its plant (including computer programmes), or any part thereof, the failure of which could cause or contribute substantially to, or a purpose of which is to prevent, or limit the effect of, a major accident: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). As to the meaning of 'major accident' see PARA 723 note 4.

4 'Specified plant' means the plant for an installation which is provided (1) in compliance with the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, regs 11(1)(a), 13, 15 and 16 (see PARA 743); (2) as means required to be provided by reg 10 for detecting fire and for detecting and recording accumulations of flammable gases (see PARA 743); and (3) pursuant to the measures required by reg 12 to combat fire and explosion (see PARA 743); except for (a) plant which is part of the safety-critical elements for that installation; and (b) aircraft or equipment to which reg 18 applies (see PARA 743): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1).

5 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 19(1). As to the application of the regulations and exemptions from them see PARA 723.

6 As to the meaning of 'production installation' see PARA 723 note 2.

7 As to the meaning of 'non-production installation' see PARA 723 note 2.

8 As to the meaning of 'relevant waters' see PARA 723 note 1.

9 As to the meaning of 'operated' see PARA 723 note 8.

10 For the purposes of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, regs 2(6), 19 and 20, a person is to be regarded as independent only where (1) his function will not involve the consideration by him of an aspect, of a thing liable to be examined, for which he bears or has borne such responsibility as might compromise his objectivity; and (2) he will be sufficiently independent of a management system, or of a part thereof, which bears or has borne any responsibility for an aspect of which he might consider, of a thing liable to be examined, to ensure that he will be objective in discharging his function: reg 2(7).

11 Any reference in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, to a verification scheme is a reference to a suitable written scheme for ensuring, by means described in reg 2(6), that the safety-critical elements and the specified plant (1) are or, where they remain to be provided, will be suitable; and (2) where they have been provided, remain in good repair and condition: reg 2(5). Those means are (a) examination, including testing where appropriate, of the safety-critical elements and the specified plant by independent and competent persons; (b) examination of any design, specification, certificate, CE marking or other document, marking or standard relating to those elements or that plant by such persons; (c) examination by such persons of work in progress; (d) the taking of appropriate action following reports by such persons; (e) the taking of other such steps as may be properly provided for pursuant to reg 19 and Sch 7; and (f) the taking of any steps incidental to the means described in heads (a)-(e) above: reg 2(6).

12 Ie the matters contained in the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, Sch 7. Those matters are: (1) the principles to be applied by the duty holder for the installation in selecting persons (a) to perform functions under the scheme; and (b) to keep the scheme under review; (2) arrangements for the communication of information necessary for the proper implementation, or revision, of the scheme to the persons referred to in head (1) above; (3) the nature and frequency of examination and testing; (4) arrangements for review and revision of the scheme; (5) the arrangements for the making and preservation of records showing (a) the examination and testing carried out; (b) the findings; (c) remedial action recommended; and (d) remedial action performed; (6) arrangements for communicating the matters specified in head (5) above to an appropriate level in the management system of the duty holder for the installation: Sch 7 paras 1-6. As to the meaning of 'management system' see PARA 723 note 4.

13 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 19(2), (3).

14 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 20.

15 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 21.

16 Ie any of the provisions of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, regs 19-21.

17 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 22(1). For the purpose of enabling the other person to be charged with and convicted of the offence by virtue of the Health and Safety at Work etc Act 1974 s 36 (see PARA 859), a person who establishes a defence under this provision is nevertheless to be treated for the purposes of s 36 as having committed the offence: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 22(3).

18 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 22(2).

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### 732. Appeals.

Any person who is aggrieved by a decision of the Health and Safety Executive<sup>1</sup>:

- 1548 (1) as to a finding of fact made by the Executive for the purposes of the Offshore Installations (Safety Case) Regulations 2005<sup>2</sup> which affects him as a duty holder<sup>3</sup> or licensee<sup>4</sup> or any installation<sup>5</sup> for which he is or may be responsible;
- 1549 (2) not to accept a safety case<sup>6</sup> prepared by him and submitted to the Executive<sup>7</sup>;
- 1550 (3) to direct him to prepare revisions to a current safety case<sup>8</sup>;
- 1551 (4) not to accept a revision to a current safety case prepared by him and submitted to the Executive<sup>9</sup>;
- 1552 (5) to suspend<sup>10</sup> a current safety case held by him;
- 1553 (6) not to lift a suspension<sup>11</sup> in respect of a current safety case held by him;
- 1554 (7) to revoke an exemption certificate granted to him<sup>12</sup>; or
- 1555 (8) to grant to him an exemption certificate subject to a condition or a limit of time<sup>13</sup>,

may appeal to the Secretary of State<sup>14</sup>.

Any decision of the Executive which is the subject of an appeal is not suspended pending final determination of the appeal<sup>15</sup>.

1 As to the Health and Safety Executive see PARA 361 et seq.

2 Ie the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117.

3 As to the meaning of 'duty holder' see PARA 723 note 7.

4 As to the meaning of 'licensee' see PARA 723 note 1.

5 As to the meaning of 'installation' see PARA 723 note 2.

6 As to the meaning of 'safety case' see PARA 723 note 3.

7 Ie pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 7(1) or 8: see PARAS 723, 725.

8 Ie in accordance with the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(1): see PARA 724. As to the meaning of 'current safety case' see PARA 723 note 11.

9 Ie in accordance with the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 9(5), 11(1), 14(2), 15(3) or 27(1) or (2): see PARAS 725 text and notes 19-22, 723 text and notes 23-26, 724 text and notes 8-10, 13.

10 Ie pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(5): see PARA 724 text to notes 16-17.

11 Ie pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 15(8): see PARA 724 text to note 20.

12 Ie pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 23(1): PARA 723 text to note 28.



13 le pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 23(1).

14 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 24(1). As to the application of the regulations and exemptions from them see PARA 723. As to the Secretary of State see PARA 349 et seq. The provisions of Sch 8 apply where an aggrieved person appeals to the Secretary of State: reg 24(2). The Secretary of State must direct that an appeal is to be determined by a person appointed by him for the purpose and the Secretary of State must notify the parties in writing of the name of the appointed person: Sch 8 para 2. Before the determination of an appeal, the appointed person must ask the parties whether they wish to appear and be heard on the appeal and (1) the appeal may be determined without a hearing of the parties if both of them express a wish not to be heard; or (2) the appointed person must, if either party expresses a wish to appear and be heard, afford both of them an opportunity of so doing, in which case the provisions of Sch 8 Pt 2 (paras 6-11) apply: Sch 8 para 3. An appointed person may give such directions as he thinks appropriate to give effect to his determination: Sch 8 para 4. The Secretary of State may pay to an appointed person such remuneration and allowances as the Secretary of State may, with the approval of the Minister for the Civil Service, determine: Sch 8 para 5.

Where the parties are to be heard, a date, time and place for the holding of the hearing must be fixed by the appointed person, who must give not less than 28 days' notice in writing of such date, time and place to the parties: Sch 8 para 6(1). With the consent of the parties, the appointed person may give such lesser period of notice as shall be agreed with the parties and in that event he may specify a date for service of the statement referred to in Sch 8 para 7(1) later than the date determined in accordance with that paragraph: Sch 8 para 6(2). Where it becomes necessary or advisable to vary the date, time or place fixed for the hearing, the appointed person must give such notice of the variation as may appear to him to be reasonable in the circumstances: Sch 8 para 6(3).

Not later than 21 days before the date of the hearing, or such later date as the appointed person may specify in accordance with Sch 8 para 6(2), the Executive must serve on the appellant a written statement of any submission which the Executive proposes to put forward at the hearing and must supply a copy of the statement to the appointed person: Sch 8 para 7(1). Where the Executive intends to refer to or put in evidence documents (including photographs and plans) at the hearing, the statement of the Executive must be accompanied by a list of those documents together with a written notice stating the times and place at which the documents may be inspected by the appellant and the Executive must afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of those documents: Sch 8 para 7(2). If so required by the appointed person, the appellant must serve on the Executive and on the appointed person, within such time before the hearing as the appointed person may specify, a written statement of the submissions which he proposes to put forward at the hearing accompanied by a list of any documents (including photographs and plans) which he intends to refer to or put in evidence at the hearing and afford the Executive a reasonable opportunity to inspect and, where practicable, to take copies of those documents: Sch 8 para 7(3).

The parties are entitled to appear at the hearing: Sch 8 para 8(1). Any other person may appear at the discretion of the appointed person provided that he has, not later than seven days before the date of the hearing, served on the Executive a statement of his proposed submissions: Sch 8 para 8(2). The Executive must send a copy of every statement served on it in accordance with Sch 8 para 8(2) to the appointed person and to the appellant: Sch 8 para 8(3). A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or a solicitor: Sch 8 para 8(4). A person may appear in his own behalf or be represented by counsel, a solicitor or any other person: Sch 8 para 8(5). Where there are two or more persons having a similar interest in the subject matter of the hearing, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested: Sch 8 para 8(6). All hearings must be held in private: Sch 8 para 9(1). Except as otherwise provided in Sch 8 Pt 2, the procedure of the hearing is to be such as the appointed person in his discretion determines and the appointed person must state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, he proposes to adopt: Sch 8 para 9(2). Unless in a particular case the appointed person, with the consent of the appellant, otherwise determines, the appellant is to be heard first and has the right of final reply: Sch 8 para 9(3). The parties are entitled to make an opening statement, call evidence and cross-examine persons giving evidence but any other person appearing at the hearing may only do so to the extent permitted by the appointed person: Sch 8 para 9(4). Any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded him to take or obtain copies thereof: Sch 8 para 9(5). However, the appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest: Sch 8 para 9(6). The appointed person may allow the parties to alter or add to the submissions contained in any statement served under Sch 8 para 7(1) or (3), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between them, but shall (if necessary, by adjourning the hearing) give the other party an adequate opportunity of considering any such fresh submission or document: Sch 8 para 9(7). If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing at his discretion: Sch 8 para 9(8). The appointed person is entitled (subject to disclosure thereof at the hearing) to take into account any written representations or statements received by him before the hearing from any person: Sch 8 para 9(9). The appointed person may from time to time adjourn

the hearing, and where he does so, must give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing: Sch 8 para 9(10).

Where, after the hearing, the appointed person proposes to take into consideration any new evidence, including expert opinion on a matter of fact, or any new issue of fact, not being a matter of government policy or a matter affecting the safety of the state, which was not raised at the hearing and which he considers to be material to his decision, he must not come to a decision without first notifying the parties of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within that time for the re-opening of the hearing: Sch 8 para 10(1). If he thinks fit, the appointed person may cause the hearing to be re-opened and must cause it to be re-opened if asked to do so in accordance with Sch 8 para 10(1): Sch 8 para 10(2). Where a hearing is re-opened, Sch 8 para 6(1) applies as it applied to the original hearing: Sch 8 para 10(3).

The appointed person must notify the decision on the appeal, and the reasons therefor, in writing to the parties and to any person who, having appeared at the hearing, has asked to be notified of the decision: Sch 8 para 11. As to the meaning of 'notified' see PARA 723 note 16.

In Sch 8, 'appeal' means an appeal under reg 24; 'appellant' means a person who has brought an appeal; 'appointed person' means a person appointed in accordance with Sch 8 para 2; 'hearing' means a hearing to which Sch 8 Pt 2 applies; and 'parties' means the appellant and the Executive: Sch 8 para 1.

15 Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 24(3).

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### **(iii) Management and Administration**

#### **733. Notification concerning offshore installations.**

The duty holder<sup>1</sup> must, no later than the date on which an offshore installation<sup>2</sup> is due to enter or leave relevant waters<sup>3</sup>, notify the Health and Safety Executive<sup>4</sup> in writing of the date of its intended entry into or departure from such waters<sup>5</sup>.

Where there is a change of duty holder in relation to an offshore installation, the new duty holder must ensure that it is not operated until the Executive has been notified in writing of the date of such change, the name and address of the new duty holder and, where the address so furnished is outside Great Britain, an address in Great Britain to which communications to him may be sent<sup>6</sup>.

1 'Duty holder' means (1) in relation to a production installation, the operator; and (2) in relation to a non-production installation, the owner: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1). 'Production installation' means an installation which (a) extracts petroleum from beneath the sea-bed by means of a well; (b) stores gas in or under the shore or bed of relevant waters and recovers gas so stored; or (c) is used for the conveyance of petroleum by means of a pipe, and (i) includes a non-production installation converted for use as a production installation for so long as it is so converted, a production installation which has ceased production for so long as it is not converted to a non-production installation and a production installation which has not come into use; and (ii) does not include an installation which, for a period of no more than 90 days, extracts petroleum from beneath the sea-bed for the purposes of well testing; and 'non-production installation' means an installation other than a production installation: reg 2(1) (definitions added by SI 2005/3117). 'Petroleum' includes any mineral oil or relative hydrocarbon and natural gas, whether or not existing in its natural condition in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definition added by SI 2005/3117). As to the meaning of 'relevant waters' see note 3.

'Operator' means (A) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or (B) the licensee, where it is not clear to the Health and Safety Executive that one person has been appointed to perform the functions described in head (A) above or, in the opinion of the Executive, any person appointed to perform the functions described in head (A) above is incapable of performing those functions satisfactorily: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definition substituted by SI 2005/3117). 'Licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1639): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definition added by SI 2005/3117).

2 Subject to the following provisions, for these purposes the expression 'offshore installation' means a structure which is, or is to be, or has been used, while standing or stationed in relevant waters, or on the foreshore or other land intermittently covered with water (1) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well; (2) for the storage of gas in or under the shore or bed of relevant waters or the recovery of gas so stored; (3) for the conveyance of things by means of a pipe; or (4) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of heads (1)-(3) above, together with any supplementary unit which is ordinarily connected to it or any part of it (including those parts described in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(3)) and all of the connections: regs 2(1), 3(1) (reg 3(1), (2) amended by SI 2002/2175). Any reference in the 1995 regulations to operating an offshore installation is a reference to using the installation for any of the purposes described in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(1): reg 2(2). Any reference in reg 3(1) to a structure or unit does not include (a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes; (b) a well; (c) a structure or device which does not

project above the sea at any state of the tide; (d) a structure which has ceased to be used for any of the purposes specified in reg 3(1) (as so amended), and has since been used for a purpose not so specified; (e) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in reg 3(1); and (f) any part of a pipeline: reg 3(2) (as so amended). For these purposes there are to be deemed to be part of an offshore installation (i) any well for the time being connected to it by pipe or cable; (ii) such part of any pipeline connected to it as is within 500 metres of any part of its main structure; (iii) any apparatus or works which are situated on or affixed to its main structure, or wholly or partly within 500 metres of any part of its main structure and associated with a pipe or system of pipes connected to any part of that installation: reg 3(3). Where two or more structures are, or are to be, connected permanently above the sea at high tide they are, for these purposes, to be deemed to comprise a single offshore installation: reg 3(4).

'Apparatus or works' means apparatus or works described in the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6(2)(a)-(f) and a structure described in art 6(2) (g) of the definition of 'pipeline' in art 6(2); and 'pipeline' means a pipeline within the meaning of art 6(2) (see PARA 305): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1); Interpretation Act 1978 s 17(2). 'Supplementary unit' means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation; and 'vessel' includes a hovercraft and any floating structure which is capable of being staffed: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (amended by SI 2002/2175).

For these purposes, any structures and devices on top of a well are to be treated as forming part of the well: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(3).

3 For these purposes, 'relevant waters' means (1) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of territorial waters; and (2) any area designated by order under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (amended by SI 2002/2175).

4 As to the Health and Safety Executive see PARA 361 et seq.

5 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 5(1).

The 1995 regulations apply (1) in Great Britain; and (2) to and in relation to offshore installations, wells, pipelines and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 4(1), (2)(b), 5, 6 (see PARA 305): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 4(1); Interpretation Act 1978 s 17(2). As to the meaning of 'Great Britain' see PARA 305 note 7.

The Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, regs 6-21 (see PARA 733 et seq) do not apply in relation to an offshore installation which is in transit to or from a location; and an offshore installation is not in transit to or from a location while it is being manoeuvred at the location; and save where otherwise expressly provided, nothing in regs 6-13 or 15-18 imposes a duty in relation to an offshore installation while there are no persons aboard: reg 4(2), (3).

Subject to reg 20(2) and to any of the provisions imposed by the European Union in respect of the encouragement of improvements in the safety and health of workers at work, the Executive may, by a certificate in writing, exempt any person, offshore installation or class of persons or offshore installations from any requirement or prohibition imposed by the 1995 regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time: reg 20(1). The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and, in particular, to (a) the conditions, if any, which it proposes to attach to the exemption; and (b) any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 20(2).

As to employers' liability insurance in respect of offshore installations see reg 21.

6 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 5(2).

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### 734. Other health and safety management functions of duty holder.

The duty holder<sup>1</sup> must ensure that:

- 1556 (1) the offshore installation<sup>2</sup> is at all times under the charge of a competent person appointed by him to manage on his behalf the installation and the persons on it<sup>3</sup>;
  - 1557 (2) the installation manager is provided with appropriate resources to be able to carry out effectively his function, and the duties he may have to discharge in relation to co-operation<sup>4</sup>; and
  - 1558 (3) the identity of the installation manager is known to or readily ascertainable by every person on the installation<sup>5</sup>;
  - 1559 (4) there is kept on the offshore installation or at a suitable place nearby a record (the 'offshore record') of the persons who are for the time being on, or working from the installation, and containing, in relation to each such person, his full name and the name and address of his employer, if any<sup>6</sup>;
  - 1560 (5) as soon as possible after an entry is made in the offshore record, a like entry is made together with the specified additional information<sup>7</sup>, in another record (the 'onshore record')<sup>8</sup>;
  - 1561 (6) an entry in the onshore record relating to any person is thereafter kept readily available at an address in Great Britain until 28 days after he ceases to be on or to work from the installation<sup>9</sup>;
  - 1562 (7) where necessary for the health and safety of persons, comprehensible instructions on procedures to be observed on the offshore installation are put in writing and the relevant part of such instructions is brought to the attention of every person who is to do anything to which that part relates<sup>10</sup>;
  - 1563 (8) arrangements, which are appropriate for health and safety purposes, are in place for effective communication:
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29. (a) between the offshore installation and the shore, vessels, aircraft and other installations; and
  30. (b) where a helicopter is to land on or take off from an offshore installation aboard which there will be no persons immediately before the landing, or after the take-off, between the helicopter and either a suitable offshore installation with persons on board, or, where there is no such installation, suitable premises ashore<sup>11</sup>;
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- 1564 (9) a competent person appointed to be in control of helideck operations on the offshore installation (the 'helicopter landing officer') is present on the installation, that person is in control throughout such operations and such procedures are established, and plant provided, as will secure, so far as is reasonably practicable<sup>12</sup>, that helideck operations, including the landing and take-off of helicopters, are without risks to health and safety<sup>13</sup>;
  - 1565 (10) the address and telephone number of the office of the Health and Safety Executive<sup>14</sup> for the sector in which the offshore installation is situated is known to or readily ascertainable by every person on the installation<sup>15</sup>;

- 1566 (11) an adequate supply of clean, wholesome drinking water is available at suitable locations on the offshore installation and such locations are clearly marked to show that drinking water is there<sup>16</sup>;
- 1567 (12) all provisions for consumption by persons on the offshore installation are fit for human consumption, palatable and of good quality<sup>17</sup>;
- 1568 (13) save where the nature of the structure makes it impracticable to do so, the offshore installation displays its name or other designation in such a manner as to make the installation readily identifiable on approach by sea or air and displays no name, letters or figures likely to be confused with the name or other designation of another offshore installation<sup>18</sup>.

In cases where, because of the kind of work which may be done on the offshore installation or the circumstances in which work may be done on the offshore installation, it is necessary for the health or safety of persons to do so, the duty holder must introduce arrangements for securing that a person does not do such work save in accordance with the terms of a permit in writing, given by a competent person authorised by or on behalf of the duty holder<sup>19</sup>.

The duty holder must make arrangements for the collection and keeping of such meteorological and oceanographic information and such information relating to the motions of the offshore installation as is necessary for securing, so far as is reasonably practicable, the safe operation of the installation and the safety of persons on or near it<sup>20</sup>.

1 As to the meaning of 'duty holder' see PARA 733 note 1.

2 As to the meaning of 'offshore installation' see PARA 733 note 2.

3 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 6(1)(a). A reference to the installation manager is a reference to such person while he is in charge; and 'installation manager' means, in relation to an offshore installation, the person so appointed who is for the time being in charge of it: regs 2(1), 6(1)(a). For these purposes, a person is not in charge of an offshore installation when he is not on it unless he remains in communication with it and, in a case where it might be necessary to exercise his functions, is able to reach it promptly: reg 6(2). As to the application of the 1995 regulations see PARA 733 note 5.

4 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 6(1)(b). The duties referred to in head (2) in the text are duties under reg 8: see PARA 737.

5 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 6(1)(c).

6 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 9(1).

7 The information referred to in head (5) in the text is: (1) the nationality of the person working on or from the installation; (2) his date of birth; (3) his usual residence; and (4) the name, address and relationship of any next of kin of his: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 9(2)(a)-(d).

8 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 9(2).

9 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 9(3). As to the meaning of 'Great Britain' see PARA 305 note 7.

10 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 11.

11 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 12.

12 As to what is reasonably practicable see PARA 417.

13 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 13.

14 As to the Health and Safety Executive see PARA 361 et seq.

15 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 15(1).

16 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 17.

17 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 18.

18 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 19.

19 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 10.

20 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 14.

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### **735. Restraint and putting ashore.**

If an installation manager<sup>1</sup> has reasonable cause to believe that it is necessary or expedient to do so for the purpose of securing the safety of the offshore installation<sup>2</sup> or the safety or health of persons on or near it, he may take such measures against a person on the installation, including restraint of his person and putting him ashore in the United Kingdom as soon as is practicable thereafter, as are reasonable<sup>3</sup>. If it appears likely that a person will not be put ashore within 24 hours of being put under restraint, the installation manager must forthwith give notice to the duty holder<sup>4</sup> of his being kept under restraint and of the reason for it<sup>5</sup>.

1 As to the meaning of 'installation manager' see PARA 734 note 3.

2 As to the meaning of 'offshore installation' see PARA 733 note 2.

3 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 7(1). As to the application of the 1995 regulations see PARA 733 note 5. As to the meaning of 'United Kingdom' see PARA 305 note 8.

4 As to the meaning of 'duty holder' see PARA 733 note 1.

5 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 7(2).



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### **736. Employer's duties.**

The employer of a person who is not on an offshore installation<sup>1</sup>, and who is engaged in:

- 1569 (1) an activity in connection with an offshore installation;
  - 1570 (2) an activity in connection with a well<sup>2</sup>;
  - 1571 (3) pipeline works<sup>3</sup>; or
  - 1572 (4) any of the following activities in connection with pipeline works:
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- 31. (a) the loading, unloading, fuelling or provisioning of a vessel<sup>4</sup> which is engaged in pipeline works;
  - 32. (b) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel which is engaged in such works,
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must ensure that the address and telephone number of the office of the Health and Safety Executive<sup>5</sup> for the sector in which the installation or well is situated, or the pipeline works, or activity described in head (4) above, is or are carried out, is known to or readily ascertainable by such person<sup>6</sup>.

An employer of a person engaged in work on an offshore installation must ensure that he is provided with such health surveillance as is appropriate<sup>7</sup> to the health and safety risks incurred in the work; and, except where that person was assigned to the work before 20 June 1995, the health surveillance must be commenced before he is so assigned<sup>8</sup>.

1 As to the meaning of 'offshore installation' see PARA 733 note 2.

2 As to the meaning of 'well' see PARA 733 note 2.

3 For these purposes, 'pipeline works' means pipeline works within the meaning of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6(2) (see PARA 305): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (amended by SI 2005/3117). As to the meaning of 'pipeline' see PARA 733 note 2.

4 As to the meaning of 'vessel' see PARA 733 note 2.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 15(2). As to the application of the 1995 regulations see PARA 733 note 5.

7 For this purpose, 'appropriate' means appropriate having regard to the nature and magnitude of the risks to the safety and health of the employee created by the relevant work: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 16(2).

8 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, regs 1, 16(1). As to employers' liability insurance in respect of offshore installations see reg 21.

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### **737. Duties of co-operation.**

Without prejudice to any duty owed by a master, captain or person in charge of any vessel<sup>1</sup> or aircraft, every person must co-operate:

- 1573 (1) with the installation manager<sup>2</sup>, and any other person on whom any duty is placed by the relevant regulations<sup>3</sup>, so far as is necessary to enable him to comply with the relevant statutory provisions<sup>4</sup>, including this duty of co-operation;
- 1574 (2) with the installation manager, so far as is necessary to enable him to discharge his functions<sup>5</sup>; and
- 1575 (3) with the helicopter landing officer<sup>6</sup>, so far as is necessary to enable him to perform his function<sup>7</sup>.

In addition to the duty placed on him by heads (1) to (3) above, an installation manager must co-operate with the manager of another offshore installation<sup>8</sup>, where an activity carried out from, by means of or on one of the installations could affect the health and safety of persons on the other installation or of persons engaged in an activity in connection with the other installation<sup>9</sup>.

1 As to the meaning of 'vessel' see PARA 733 note 2.

2 As to the meaning of 'installation manager' see PARA 734 note 3.

3 Ie by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, regs 5-19: see PARAS 733-737.

4 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

5 Ie the functions described in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, regs 6-7: see PARAS 734-735.

6 As to the meaning of 'helicopter landing officer' see PARA 734.

7 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 8(1), (3). The function referred to in head (3) in the text is the function referred to in reg 13: see PARA 734. As to the application of the 1995 regulations see PARA 733 note 5.

8 As to the meaning of 'offshore installation' see PARA 733 note 2.

9 Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 8(2).

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### 738. First aid.

The person in control<sup>1</sup> of an offshore installation, pipeline works or any of the following activities in connection with an offshore installation carried on from a vessel, that is to say construction, reconstruction, alteration, repair, maintenance, cleaning, demolition, dismantling and any activity immediately preparatory thereto, must:

- 1576 (1) provide, or ensure that there are provided, such equipment, facilities and medications and such number of suitable persons<sup>2</sup> as are adequate and appropriate in the circumstances for rendering first aid<sup>3</sup> to, and treating in accordance with the directions of a registered medical practitioner<sup>4</sup> (who may or may not be present) persons who are injured or become ill while at work<sup>5</sup>;
- 1577 (2) provide, or ensure that there is provided, such number of suitable persons as is adequate and appropriate in the circumstances for giving simple advice in connection with the health of persons at work;
- 1578 (3) make, or ensure that there are made, such arrangements as will enable:
  - 320 33. (a) the work of the suitable persons referred to in heads (1) and (2) above to be supervised by one or more suitably qualified registered medical practitioners; and
  - 34. (b) the advice or presence, as appropriate, of a suitably qualified registered medical practitioner to be obtained when needed;
- 321 1579 (4) ensure that persons at work are informed of the provisions and arrangements that have been made under the above provisions, in particular, but without prejudice to the generality of the foregoing, as to the location of equipment, facilities, medications and personnel<sup>6</sup>.

The Health and Safety Executive<sup>7</sup> may, by a certificate in writing, exempt any person, class of persons, offshore installation, class of offshore installations, pipeline works, class of pipeline works, activity or class of activity from heads (2) and (3) above and from the prescribed training requirements<sup>8</sup> for suitable persons<sup>9</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health, safety and welfare of persons at work will not be prejudiced in consequence of it<sup>10</sup>.

In any proceedings for an offence of contravening the relevant regulations<sup>11</sup> it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence<sup>12</sup>.

The regulations are supported by an approved code of practice<sup>13</sup>.

1 'Person in control' means (1) in relation to an offshore installation, the person who is the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) for the purposes of those regulations (see PARA 733 note 1); (2) in relation to pipeline works, the owner of the pipeline or the proposed owner of the proposed pipeline as both are defined in the Petroleum Act 1998 s 27 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1749) or, if no person has been so

designated as the owner of the pipeline or proposed owner of the proposed pipeline, the person in whom the pipeline is vested or the person for whom it is to be constructed; (3) in relation to an activity in connection with an offshore installation (a) the person who is, in relation to the installation, the duty holder defined as described in head (1) above; and (b) the employer of persons engaged in that activity: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 2(1) (amended by SI 1995/738); Interpretation Act 1978 s 17(2). 'Offshore installation' has the same meaning as in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (see PARA 733 note 2); 'pipeline' means any pipeline or part of a pipeline in relation to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 are applied by the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6 (see PARA 305) and any pipeline or part of a pipeline which is connected to it or to an offshore installation and which is in, under or over inland waters within Great Britain or tidal waters and parts of the sea in or adjacent to Great Britain; and 'pipeline works' means any of the works mentioned in art 6(2)(a)-(d) of the definition of pipeline works in the 2001 Order which relate to a pipeline within the meaning of the 1989 regulations: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 2(1) (as so amended); Interpretation Act 1978 s 17(2).

2 For the purposes of the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 5(1)(a), (b) (see heads (1)-(2) in the text), a person is not suitable unless he has undergone such training, or further training, and has obtained such qualifications, or further qualifications, as the Health and Safety Executive may approve for the time being in respect of the relevant case or class of case: reg 5(2) (a) (amended by virtue of SI 1993/1823). For transitional provisions see the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 5(2)(b), (c). The Executive has power to grant exemption from reg 5(2)(a): see the text and notes 8-10.

3 'First aid' means (1) in cases where a person will need help from a medical practitioner or nurse, treatment for the purpose of preserving life and minimising the consequences of injury and illness until the appropriate help is obtained; and (2) treatment of minor injuries or illnesses which would otherwise receive no treatment or which do not need treatment by a medical practitioner or nurse; and such 'treatment' includes redressing and other follow-up treatment: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 2(1).

4 As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

5 As to the meaning of 'work' see PARA 302 note 1. For these purposes and for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), the meaning of 'work' and 'at work' is extended, in relation to the provision of first aid and other medical assistance, the provision of advice in connection with health, and the provision of information in connection with all the foregoing, so that all persons employed or self-employed are treated as being at work whether or not they are on duty, if they are on (1) an offshore installation; (2) a vessel engaged in pipeline works; or (3) a vessel from which any of the following activities in connection with an offshore installation are being carried on, that is to say construction, reconstruction, alteration, repair, maintenance, cleaning, demolition, dismantling and any activity immediately preparatory thereto: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 4.

6 Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 5(1). Nothing in reg 5, however, requires alteration of the siting or construction of a sick bay which at the date of the coming into force of the 1989 regulations (ie 13 September 1990: see reg 1) existed either on an offshore installation in respect of which there was a valid certificate of fitness issued under the Offshore Installations (Construction and Survey) Regulations 1974, SI 1974/289 (revoked), or on a vessel if (1) the sick bay is provided with interior surfaces which may easily be kept clean; and (2) there is provided (a) in the sick bay or in suitable accommodation in its immediate vicinity a bath accessible from three sides; (b) in suitable accommodation in the immediate vicinity of the sick bay, a water-closet and a hand wash-basin; and (3) a supply of sufficient hot and cold water for the bath and hand wash-basin and of sufficient cold water for the water-closet: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 5(3). 'Sick bay' means a room for the medical treatment and care of sick and injured persons: reg 2(1). Subject to that, the 1989 regulations apply to or in relation to premises and activities (i) in Great Britain which are or are connected with offshore installations or pipeline works; and (ii) outside Great Britain in circumstances in which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 4-6: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 3; Interpretation Act 1978 s 17(2).

7 As to the Health and Safety Executive see PARA 361 et seq.

8 Ie from the requirements of the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 5(2)(a): see note 2.

9 Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 7(1) (amended by virtue of SI 1993/1823; and by SI 1999/3242). Any such exemption may be granted subject to conditions and to limit of time and may be revoked by a certificate in writing at any time (Offshore Installations and Pipeline

Works (First-Aid) Regulations 1989, SI 1989/1671, reg 7(1)); but an exemption so granted from the requirements in reg 5(2)(a) must be subject to the condition that a person provided under reg 5(1)(a) (see head (1) in the text) has undergone adequate training (reg 7(3) (added by SI 1999/3242)).

10 Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 7(2) (amended by virtue of SI 1993/1823).

11 Ie the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671.

12 Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 6. As to offences and penalties generally see *PARA 852 et seq.*

13 See the Approved Code of Practice and Guidance on Healthcare and First Aid on Offshore Installations and Pipeline Works (L123). As to codes of practice approved by the Health and Safety Executive see *PARA 426*.

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#### **(iv) Safety Representatives and Committees**

##### **739. Election of safety representatives.**

The workforce<sup>1</sup> of an offshore installation is entitled to nominate and elect safety representatives<sup>2</sup>. A system of constituencies must be established and maintained<sup>3</sup> by the installation manager<sup>4</sup> by reference to one or more specified factors<sup>5</sup>. The system of constituencies must be such that there are at least two constituencies; that every member of the workforce can be assigned to a constituency; and that the number of persons who may at any time be assigned to a constituency does not exceed 40 and is no fewer than three<sup>6</sup>. The installation manager must signify the establishment or modification of a constituency by ensuring the posting of specified particulars<sup>7</sup> in appropriate languages<sup>8</sup> at suitable places in the installation so that they can easily be read by all the members of the workforce<sup>9</sup>. If any representations are made to him concerning the particulars<sup>10</sup>, the installation manager must consider them at once, and if he considers that they necessitate amendment must ensure that amended particulars in appropriate languages are posted at suitable places<sup>11</sup>.

The installation manager must as soon as practicable<sup>12</sup> ensure that every member of the workforce expected to remain on the installation for more than 48 hours is assigned to such a constituency<sup>13</sup>. He subsequently must ensure that each new member is assigned to a constituency and informed in writing of the constituency to which he has been assigned and of the name of the safety representative of that constituency, and that the safety representative is informed in writing of the name of any new member of the workforce assigned to his constituency<sup>14</sup>.

The members of the workforce assigned to a constituency may elect one safety representative in accordance with prescribed provisions<sup>15</sup> in respect of nominations<sup>16</sup>, candidacy<sup>17</sup>, the display of a list of candidates<sup>18</sup>, the holding of a secret ballot<sup>19</sup>, and the notification and certification of the results of that ballot<sup>20</sup>. Provision is made for constituencies without a candidate<sup>21</sup>, for the cessation of representation<sup>22</sup>, and in respect of safety representatives for single employer constituencies<sup>23</sup>.

1 'Workforce' includes every person who is for the time being working on or from an offshore installation under a contract of service or a contract for services, other than the installation manager, a body corporate or an unincorporated body of persons: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2. 'Offshore installation' is not defined for these purposes; but see PARA 733 note 2.

2 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 4. The 1989 regulations apply to an offshore installation at a working station in controlled waters which normally has persons on board: reg 3 (substituted by SI 1995/738). 'Controlled waters' is not defined for these purposes; but see PARA 574 note 6.

3 In consultation with any safety committee established in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 19 (see PARA 741): reg 5(1).

4 'Installation manager' has the meaning given by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (see PARA 734 note 3): Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2 (definition).

substituted by SI 1995/738). An installation manager who fails to comply with an obligation imposed on him by the 1989 regulations is guilty of an offence: see PARA 742.

5 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 5(1). The factors are: (1) the areas of the offshore installation; (2) the activities undertaken on or from the installation; (3) the employers of members of the workforce; and (4) other objective criteria which appear to the installation manager to be appropriate to the circumstances of the installation: reg 5(1)(a)-(d).

6 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 5(2). In determining the number of persons to be assigned to a constituency the installation manager must have regard, in particular, to the nature of the work undertaken by the members of the constituency and the hazards related thereto: reg 5(3).

7 The specified information is: (1) particulars of the establishment or modification of the constituency; and (2) notice that the installation manager will consider any representations with regard to such particulars as may be made to him within the prescribed period commencing with the date of their posting: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 5(4)(a), (b). Such representations may be made by any member of the workforce and, if the constituency is intended to be comprised exclusively of persons employed by the same employer, that employer: reg 5(5). This provision does not apply where an installation manager proposes to establish a constituency and there is in existence on the installation a safety committee established under reg 19 (see PARA 741). In such a case the installation manager must consult the safety committee and, if the constituency is intended to be comprised exclusively of persons employed by the same employer, that employer: reg 5(7). The 'prescribed period' is the period of five weeks or such shorter period as is reasonably practicable to make representations or nominations, or to vote, as the case may be; and 'week' means any period of seven days: reg 2.

8 'Appropriate languages' means English and such other languages as are necessary to enable the information to be understood by all persons on the installation who may need to refer to it: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2.

9 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 5(4).

10 As to such representations see note 7.

11 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 5(6).

12 As to the meaning of 'practicable' see PARA 417.

13 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 6(1), (3).

14 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 6(2).

15 In accordance with the provisions of the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, regs 8-13: reg 7.

16 As soon as practicable after (1) the establishment or modification of a constituency; or (2) the expiry of a period of two years since the safety representative was last elected; or (3) a person's ceasing to be the safety representative in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 14(b), (c) or (d) (see note 22), the installation manager must ensure that a notice in appropriate languages is posted at suitable places as prescribed in reg 5(4) and that an election is to take place in relation to the constituency in question, with details of the members of that constituency; and he must invite the nomination of candidates for election to be made to him during the prescribed period commencing with the date of posting of the notice: reg 8.

17 A person is eligible to be a candidate for election as the safety representative for a constituency if the installation manager is satisfied that he is a member of that constituency, that he is willing to stand as a candidate for the constituency, that he has been nominated by a second member of the constituency, and that his nomination has been seconded by a third member: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 9(1). The installation manager must provide every person who is eligible to be a candidate with reasonable facilities to enable him to promote his election campaign: reg 9(2).

18 After the expiry of the period allowed for nominations under the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 8 and within one week from that date, the installation manager must ensure that there is displayed in appropriate languages at suitable places

as prescribed in reg 5(4) either a list of duly nominated candidates or, if no candidate has been duly nominated, notice of the existence of a vacancy: reg 10.

19 If in any constituency more than one candidate is duly nominated, the installation manager must, throughout the prescribed period commencing with the expiry of the one week period specified in the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 10, conduct a secret ballot in which each member of that constituency is to be entitled to vote for one candidate in the constituency: reg 11(1). If the Health and Safety Executive receives a claim in writing from a member of the workforce that a ballot held for these purposes does not comply with these requirements or has not been conducted fairly, it may, if satisfied that the claim is justified, declare the ballot to be a nullity and direct the installation manager or the duty holder to conduct a further ballot in accordance with such requirements as the Executive may specify: reg 11(2) (reg 11(2), (3) amended by SI 1995/738; and by virtue of SI 1993/1823). The installation manager or the duty holder must comply with any directions so given by the Executive: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 11(3) (as so amended). As to the Health and Safety Executive see PARA 361 et seq.

'Duty holder' in relation to an offshore installation means the person who is the duty holder within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) for the purpose of those regulations (see PARA 733 note 1): Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2 (definition added by SI 1995/738). A duty holder who fails to comply with an obligation imposed on him by the 1989 regulations is guilty of an offence: see PARA 742.

20 The installation manager must (1) ensure that within one week from the expiry of the election period prescribed in the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 11(1) or specified under reg 11(2) a notice in appropriate languages is posted at suitable places as prescribed in reg 5(4) certifying the result of the ballot or, in the case of a constituency for which only one candidate has been duly nominated, declaring that candidate to be the safety representative for that constituency; and (2) as soon as is practicable thereafter issue to every person elected to be a safety representative a document signed and dated by him which certifies the date on which the person was elected, the name of the person's employer (if any), the name or other designation of the offshore installation and a description which is sufficient to identify the constituency he represents: reg 12.

21 If in any constituency no candidate has been nominated in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 9 and no safety representative holds that position by virtue of reg 15 (see note 23), (1) the installation manager must, until a candidate has been so nominated or a safety representative holds that position under reg 15, keep and update at monthly intervals a list of members for the time being of the constituency and the latest copy of the list must be posted at suitable places as prescribed in reg 5(4) on the installation; and (2) if an eligible candidate is subsequently nominated in accordance with reg 9 the installation manager must arrange for an election to be held for the constituency, in accordance with the provisions of the 1989 regulations concerning elections set out in notes 15-20: reg 13 (amended by SI 1995/738).

22 A person ceases to be a safety representative for these purposes: (1) on the election of another representative for his constituency in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, regs 8-13; or (2) if he resigns; or (3) if his employment is terminated; or (4) if he has been absent from the installation for which he is a safety representative for a continuous period of 12 weeks: reg 14.

23 Where a person has not more than two years previously been elected in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, regs 8-13 as a safety representative on an offshore installation for a constituency, the members of which were exclusively the employees of his present employer, he may, subject to reg 15(2), (3), continue to hold that position without re-election as a safety representative for a constituency, the members of which are exclusively employees of his present employer, on any other offshore installation on which he is subsequently a member of the workforce: reg 15(1). Subject to reg 15(3), no person may hold a position as a safety representative for a constituency under reg 15(1) if the constituency is already represented by a safety representative: reg 15(2). No person may hold a position as a safety representative under reg 15(1) on more than one offshore installation at any time unless the installations are for the time being normally linked by a bridge: reg 15(3).



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#### **740. Functions and powers of safety representatives.**

Each safety representative<sup>1</sup> has the function (but not the duty<sup>2</sup>):

- 1580 (1) of investigating potential hazards and dangerous occurrences and examining the causes of accidents where the interests of the members of his constituency might be involved, or (in some circumstances<sup>3</sup>) those of any other member of the workforce<sup>4</sup>;
- 1581 (2) of investigating complaints by any member of his constituency relating to the occupational health and safety<sup>5</sup> of any member of the workforce and (in some circumstances) of investigating complaints by any other member of the workforce<sup>6</sup>;
- 1582 (3) of making representations to the installation manager<sup>7</sup> and, where appropriate, to every employer on matters arising out of head (1) or head (2) above<sup>8</sup>;
- 1583 (4) of making representations to the installation manager and, where appropriate, to any employer on general matters affecting the occupational health and safety of members of the workforce<sup>9</sup>;
- 1584 (5) of attending meetings of the safety committee<sup>10</sup>;
- 1585 (6) of representing his constituency members in consultations on the offshore installation with duly appointed inspectors<sup>11</sup>; and
- 1586 (7) of consulting members of his constituency either individually or, so far as is reasonably practicable, collectively on any matters arising out of his functions or those of the safety committee<sup>12</sup>.

To enable him to fulfil these functions a safety representative may, subject to certain preconditions<sup>13</sup>, inspect any part of the offshore installation or its equipment<sup>14</sup>. If there has been a notifiable incident<sup>15</sup>, and it is safe for an inspection to be carried out, and the interests of the members of his constituency might be involved, a safety representative may, after due notification<sup>16</sup>, inspect the part of the installation or the equipment concerned and, so far as is necessary for the purpose of determining the cause, may inspect any other part of the installation or its equipment<sup>17</sup>. He may also seek advice and guidance whether from persons on the offshore installation or elsewhere on any matters arising out of his functions or those of the safety committee<sup>18</sup>.

Where two or more safety representatives consider that there is an imminent risk of serious personal injury arising from an activity carried out on the installation, they must make representations to the installation manager, who must as soon as is reasonably practicable prepare and send a report in writing on the matter to a duly appointed inspector<sup>19</sup>, and either representative may make a report in writing by the fastest practicable means to such an inspector<sup>20</sup>.

A safety representative is entitled to see and be supplied, by or on behalf of the installation manager, with copies of any document relating to the occupational health and safety at work of the workforce which is required by any statutory provision to be kept on the offshore installation, except a document consisting of or relating to any health record of an identifiable individual or a current safety case<sup>21</sup> to which the following provisions apply<sup>22</sup>. He is also entitled:

- 1587 (a) to be supplied, by or on behalf of the installation manager, with a written summary of the main features of a current safety case relating to the offshore installation<sup>23</sup>, and that summary must include any particulars concerning remedial work and the time by which it will be done;
- 1588 (b) to see a copy of that current safety case;
- 1589 (c) to be supplied, by or on behalf of the installation manager, with copies of such parts of that current safety case as the safety representative needs for the purpose of performing any of his functions in circumstances where his entitlement under heads (a) and (b) above is insufficient for that purpose<sup>24</sup>.

1 le one elected as provided for in PARA 739.

2 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16.

3 le when the safety representative of that other member of the workforce is not available or there is no safety representative for that person's constituency: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(a).

4 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(a). As to the meaning of 'workforce' see PARA 739 note 1.

5 'Occupational health and safety' means the health and safety of the workforce while on or working from an installation and while boarding or leaving it: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2.

6 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(b). The circumstances are when that person's safety representative is not available or there is no safety representative for that person's constituency: reg 16(b).

7 As to the installation manager see PARA 739 note 4; and as to offences by the installation manager see PARA 742.

8 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(c).

9 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(d).

10 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(e). The safety committee is that established under regs 19, 20; as to which see PARA 741.

11 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 16(f). The reference to an inspector is to an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19 (see PARA 375) who is authorised to act for the purposes of the provision in question: Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 5(1). As to the Health and Safety Executive see PARA 361 et seq.

12 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, regs 16(g), 22. As to what is reasonably practicable see PARA 417.

13 The preconditions are that he has given the installation manager and, if his employer is not the duty holder, his employer, reasonable notice in writing of his intention to do so, and that he has not inspected that part of the installation or its equipment in the previous three months; although he may carry out more frequent inspections by agreement with the installation manager and, if his employer is not the duty holder, his employer: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(2)(a), (b) (reg 17(2), (3) amended by SI 1995/738). As to the meaning of 'duty holder' see PARA 739 note 19; and as to offences by the duty holder see PARA 742.

14 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(2) (as amended: see note 13).

15 'Notifiable incident' means any death, injury, disease or dangerous occurrence which is required to be reported under the Reporting of Injuries, Diseases or Dangerous Occurrences Regulations 1995, SI 1995/3163

(see PARA 399 et seq): Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(6) (amended by SI 1995/3163).

16 The safety representative must first notify the installation manager; and, where his employer is not the duty holder and it is reasonably practicable to notify him, his employer, of his intention to carry out the inspection: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(3) (as amended: see note 13).

17 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(3) (as amended: see note 13).

18 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(1).

19 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(4)(a). As to the reference to an inspector see note 11.

20 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 17(4)(b).

21 'Current safety case' means a current safety case within the meaning of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1) (see PARA 723 note 11): Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2 (definition added by SI 2005/3117).

22 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 18 (amended by SI 1992/2885 and SI 2005/3117), which is subject to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 18A(2)(a). The current safety case referred to in the text is one to which reg 18A applies. The references in (1) reg 18 to seeing a document, where the statutory provision concerned allows the information in the document to be kept on film or in electronic form and it is so kept; (2) reg 18A(1)(a) (see head (a) in the text) to seeing a current safety case, where the information in it is kept on film or in electronic form on the installation, are references to having appropriate facilities to enable him to read that information: reg 18A(2) (reg 18A added by SI 1992/2885; and amended by SI 2005/3117).

23 le prepared pursuant to the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117: see PARA 723 et seq.

24 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 18A(1) (as added and amended: see note 22).

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#### **741. Safety committees on offshore installations.**

The duty holder in relation to an offshore installation<sup>1</sup> for which there are one or more safety representatives<sup>2</sup> must establish a safety committee<sup>3</sup>, including the installation manager<sup>4</sup> as chairman, one further person who may be appointed by the duty holder or the installation manager, all the safety representatives, and such other persons as the safety committee may co-opt by the unanimous vote of the members of the committee present and voting on the co-option<sup>5</sup>.

The first meeting of a safety committee must be called<sup>6</sup> by the chairman within six weeks of the date of its establishment, and thereafter at least once every three months<sup>7</sup>.

A safety committee has, in relation to the offshore installation which it serves, the function (but not the duty<sup>8</sup>) of:

- 1590 (1) keeping under review the measures taken to ensure the occupational health and safety of the workforce<sup>9</sup>;
- 1591 (2) keeping under review, and making recommendations to the installation manager with regard to, the system of the constituencies so as to ensure adequate representation of the workforce on health and safety matters<sup>10</sup>;
- 1592 (3) keeping under review the arrangements for the training of safety representatives<sup>11</sup>, and making representations to the employers as appropriate<sup>12</sup>;
- 1593 (4) keeping under review the frequency of safety committee meetings and the circumstances under which they may be called, and making representations to the installation manager as appropriate<sup>13</sup>;
- 1594 (5) considering representations from any member of the safety committee on any matter affecting the occupational health and safety<sup>14</sup> of the workforce<sup>15</sup>, and making recommendations to the installation manager as appropriate<sup>16</sup>;
- 1595 (6) considering the causes of accidents, dangerous occurrences and cases of occupational ill health, and making recommendations to the installation manager as appropriate<sup>17</sup>;
- 1596 (7) considering any document relating to the occupational health and safety of the workforce which is required by any statutory provision to be kept on the offshore installation, except any document consisting of or relating to any health record of an identifiable individual<sup>18</sup>;
- 1597 (8) preparing and maintaining a record of its business<sup>19</sup>, and as soon as practicable after each meeting sending the record of that meeting to the duty holder, who must keep it at a place onshore in the United Kingdom until the sixth anniversary of the expiry of the year to which the record relates<sup>20</sup>.

A safety committee must seek to advance co-operation on matters affecting occupational health and safety between all parties on the installation which the committee serves, and to that end must seek to promote and develop measures to ensure the occupational health and safety of the workforce<sup>21</sup>.

<sup>1</sup> As to the meaning of 'duty holder' see PARA 739 note 19; and as to offences by the duty holder see PARA 742. As to the meaning of 'offshore installation' for these purposes see PARA 739 notes 1, 2.

- 2     le who have been elected or hold that position by virtue of the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 15 (see PARA 739).
- 3     Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 19 (amended by SI 1995/738).
- 4     As to the installation manager see PARA 739 note 4; and as to offences by the installation manager see PARA 742.
- 5     Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 20(1) (amended by SI 1995/738). A person co-opted in this way onto the safety committee is not entitled to vote on the co-option of another to the committee: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 20(2).
- 6     In calling a meeting, the chairman must endeavour to appoint a date on which the members can attend: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 21(2). A safety representative may nominate a member of his constituency to attend meetings as a member in his stead when he is unable to attend: reg 21(3).
- 7     Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 21(1). The quorum for a meeting of a safety committee is the chairman and a third (rounded up to a whole number) of the number of safety representatives holding office at the date the meeting is called: reg 21(4).
- 8     Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1).
- 9     Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(a).
- 10    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(b).
- 11    le in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 27 (see PARA 742 note 14).
- 12    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(c).
- 13    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(d). This is expressly without prejudice to the requirements of reg 21(1) (see the text and note 7).
- 14    As to the meaning of 'occupational health and safety' see PARA 740 note 5.
- 15    As to the meaning of 'workforce' see PARA 739 note 1.
- 16    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(e).
- 17    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(f).
- 18    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(g).
- 19    A copy of the record must be kept on the installation for one year from the date of the meeting: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(h).
- 20    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(1)(h) (amended by SI 1995/738). As to the meaning of 'practicable' see PARA 417.
- 21    Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 22(2).

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**742. Duties of duty holders, employers etc where there is a safety committee.**

At every offshore installation<sup>1</sup> served by a safety committee<sup>2</sup>, it is the duty of the duty holder<sup>3</sup>:

- 1598 (1) to facilitate the exercise by the committee of its functions and by the safety representatives of their statutory functions and powers in respect of the installation<sup>4</sup>, and for that purpose to make available the necessary accommodation, facilities for communication and office equipment supplies;
- 1599 (2) to consult safety representatives with a view to the making and maintenance of arrangements which will enable them and the workforce<sup>5</sup> to co-operate effectively in promoting and developing measures to ensure the health and safety of persons working on or from the installation, and in checking the effectiveness of such arrangements; and
- 1600 (3) without prejudice to head (2) above, to consult safety representatives in good time with regard to:
  - 322 35. (a) the revision, review or preparation of a safety case relating to the installation<sup>6</sup>;
  - 36. (b) the introduction to the installation of any measure which may substantially affect the health and safety of the workforce;
  - 37. (c) the health and safety consequences for the workforce of the introduction, including the planning thereof, to the installation of new technologies; and
  - 38. (d) the arrangements for the appointment of persons<sup>7</sup> to undertake duties in an emergency<sup>8</sup>.

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It is the duty of the duty holder and any employer of members of a workforce to consult safety representatives in good time with regard to:

- 1601 (i) any health and safety information he is required to provide to members of a workforce by or under the relevant statutory provisions<sup>9</sup>; and
- 1602 (ii) the planning and organisation of any health and safety training he is to provide to members of a workforce by or under the relevant statutory provisions<sup>10</sup>.

It is the duty of every employer of members of a workforce to consult safety representatives in good time with regard to his arrangements for appointing persons to give health and safety assistance<sup>11</sup> in accordance with the provisions of the relevant regulation<sup>12</sup>.

It is also the duty of the duty holder, the installation manager and any employer of members of the workforce, to make available (with certain exceptions<sup>13</sup>) to safety representatives the information relating to occupational health and safety within his knowledge as necessary to enable the safety representatives to fulfil their functions<sup>14</sup>; and to make available to safety representatives and safety committees any documents which they are entitled to see<sup>15</sup> and to provide the facilities to which a safety representative is entitled<sup>16</sup> in order to read them<sup>17</sup>.

The duty holder must ensure that at least one copy of the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 is readily available on the installation for inspection by the workforce<sup>18</sup>.

The employer of a safety representative must permit him to take such time off from his work on the offshore installation without loss of pay<sup>19</sup> during his working hours as is necessary for him to perform his functions as a safety representative<sup>20</sup>.

It is the duty of the duty holder to ensure that a safety representative for the installation is provided with such training in aspects of the functions of a safety representative as are reasonable in all the circumstances and that any costs associated with such training, including travel and subsistence costs, are not borne by the safety representative<sup>21</sup>.

If a duty holder, installation manager or employer fails to comply with an obligation imposed upon him by the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 he is guilty of an offence<sup>22</sup>.

1 As to the meaning of 'offshore installation' for these purposes see PARA 739 notes 1, 2.

2 As to safety committees see PARA 741.

3 As to the meaning of 'duty holder' see PARA 739 note 19.

4 I.e. their functions and powers under the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971: see PARAS 739-741.

5 As to the meaning of 'workforce' see PARA 739 note 1.

6 I.e. under the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117: see PARA 723 et seq.

7 I.e. the persons referred to in the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 6(1): see PARA 743.

8 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(1), (2) (reg 23 substituted by SI 1995/738; and the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(2) amended by SI 1995/743 and SI 2005/3117).

9 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

10 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(3) (as substituted: see note 8).

11 I.e. appointing persons in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7(1): see PARA 436.

12 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 23(4) (as substituted (see note 8); amended by SI 1999/3242).

13 The exceptions are (1) any information the disclosure of which would be against the interests of national security; (2) any information which cannot be disclosed without contravening a prohibition imposed by or under an enactment; (3) any information relating specifically to an individual, unless he has consented to its disclosure; (4) any information the disclosure of which would, for reasons other than its effect on occupational health and safety, cause substantial injury to the undertaking of any of the parties on whom the duty is imposed or, where the information has been supplied to any of the parties by some other person, to the undertaking of that other person; (5) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 24(a)-(e).

14 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 24 (amended by SI 1995/738).

15 The entitlement arises under the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 18 or 18A: see PARA 740.

16 See note 15.

17 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 25(1) (amended by SI 1992/2885 and SI 1995/738).

18 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 25(2) (amended by SI 1995/738).

19 Provisions as to the calculation and payment of remuneration are contained in the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 26(2)-(4). Where a safety representative is permitted to take time off in accordance with reg 26(1), his employer must pay him (1) where the safety representative's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time; (2) where the safety representative's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work (ascertained in accordance with reg 26(3)): reg 26(2). The average hourly earnings referred to in head (2) are the average hourly earnings of the safety representative concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances: reg 26(3). Any payment to a safety representative by an employer in respect of a period of time off (a) if it is a payment under any contractual obligation, is to go towards discharging the employer's liability in respect of the same period under reg 26(2); (b) if it is a payment under reg 26(2), is to go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period: reg 26(4).

20 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 26(1).

21 Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 27 (substituted by SI 1995/738).

22 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 28(1) (amended by SI 1995/738). It is a defence for the person charged to prove that he exercised all due diligence to prevent the commission of the offence; and that the relevant failure to comply was committed without his consent, connivance or wilful default: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 28(2). As to offences and penalties generally see PARA 852 et seq.

No requirement imposed or power conferred upon any person by the 1989 regulations is to be construed as requiring or empowering that person to disregard any requirement imposed upon him by or under any enactment: reg 29.



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## **(v) Prevention of Fire and Explosion; Emergency Response**

### **743. Duties in prevention of unplanned or uncontrolled fire and unplanned explosion and in emergency response.**

The duty holder<sup>1</sup> must take appropriate measures with a view to protecting persons on the installation<sup>2</sup> from unplanned or uncontrolled fire<sup>3</sup> and unplanned explosion<sup>4</sup> and securing effective emergency response<sup>5</sup>.

He must perform, and thereafter repeat as often as may be appropriate a process (an 'assessment') in relation to the installation which must consist of:

- 1603 (1) the identification of the various events which could give rise to a major accident<sup>6</sup> involving unplanned or uncontrolled fire or unplanned explosion or the need (whether or not by reason of such fire or explosion) for evacuation, escape or rescue to avoid or minimise a major accident;
- 1604 (2) the evaluation of the likelihood and consequences of such events;
- 1605 (3) the establishment of appropriate standards of performance to be attained by anything provided by measures for ensuring effective evacuation, escape, recovery and rescue to avoid or minimise a major accident and otherwise protecting persons from a major accident involving fire or explosion; and
- 1606 (4) the selection of appropriate measures<sup>7</sup>.

The duty holder must record the assessment, including each repetition of it and keep the record at an address in Great Britain which he must notify to the Health and Safety Executive<sup>8</sup>.

The duty holder must establish such appropriate organisation and arrangements as are to have effect in, or in anticipation of, an emergency and which must include arrangements:

- 1607 (a) for command by competent persons which can be maintained, so far as is practicable, throughout an emergency;
- 1608 (b) for there to be a sufficient number of persons on the installation competent to undertake emergency duties and operate relevant equipment;
- 1609 (c) in the case of an installation on which personnel are present, for a sufficient number of such persons to be in attendance at the helicopter landing area during helicopter movements; and
- 1610 (d) for lists of persons referred to in heads (a), (b) and (c) above to be posted at suitable locations on the installation when persons are present<sup>9</sup>.

The duty holder must ensure that every person on the installation is provided with adequate instruction and training in the appropriate action to take in an emergency and can consult written information on the use of emergency plant<sup>10</sup>. The duty holder must also ensure that there is kept available near the helicopter landing area equipment necessary for use in the event of an accident involving a helicopter<sup>11</sup>.

The duty holder must, after consulting persons who are likely to become involved in emergency response, prepare and, as often as is appropriate, revise a document (the 'emergency response plan') containing sufficient information, for the guidance of such persons, on the organisation and arrangements which are to have effect in an emergency and procedures by way of emergency response to be followed in different circumstances<sup>12</sup>. The duty holder must ensure that the emergency response plan is available to all persons on the installation and that each person on the installation, and each person who may be called upon to assist in implementing the emergency response plan, are given such notification of its contents as is sufficient for them<sup>13</sup>. The duty holder must ensure that the above-mentioned organisation, arrangements and procedures are tested, by practice and otherwise, as often as may be appropriate<sup>14</sup>. Every person on the installation must, in an emergency, so far as is practicable, conform to the appropriate procedure in the plan<sup>15</sup>.

The duty holder must take appropriate measures with a view to preventing unplanned or uncontrolled fire and unplanned explosion, including such measures to:

- 1611 (i) ensure the safe production, processing, use, storage, handling, treatment, movement and other dealings with flammable and explosive substances;
- 1612 (ii) prevent the uncontrolled release of flammable or explosive substances;
- 1613 (iii) prevent the unwanted or unnecessary accumulation of combustible, flammable or explosive substances and atmospheres; and
- 1614 (iv) prevent the ignition of such substances and atmospheres<sup>16</sup>.

The duty holder must take appropriate measures with a view to detecting unplanned or uncontrolled fire and other events which may require emergency response, including the provision of means for detecting and recording accumulations of flammable or toxic gases and identifying leakages of flammable liquids<sup>17</sup>. The duty holder must also take appropriate measures with a view to enabling information regarding such incidents to be conveyed forthwith to places from which control action can be instigated<sup>18</sup>.

The duty holder must make appropriate arrangements for giving warning of an emergency, by audible and, where necessary, visual alarm systems, to all persons on the installation<sup>19</sup> and, for the purpose of emergency response, for communication between persons on the installation, between the installation and persons not on it and engaged in activities in connection with it and between the installation and persons beyond it; and must ensure that, so far as is reasonably practicable, the arrangements are capable of remaining effective in an emergency<sup>20</sup>.

The duty holder must take appropriate measures with a view to limiting the extent of an emergency, including such measures to combat unplanned or uncontrolled fire and unplanned explosion and must ensure that, where appropriate, those measures include provision for the remote operation of plant and that, so far as is reasonably practicable, any arrangements made and plant provided pursuant to this provision are capable of remaining effective in an emergency<sup>21</sup>. Similarly, appropriate measures must be taken with a view to protecting persons on the installation during an emergency from the effects of such fire and explosion<sup>22</sup>.

The duty holder must make appropriate provision for areas for persons to muster safely in an emergency ('muster areas'); for safe egress from accommodation and work areas, and safe access to muster areas, temporary refuge, and evacuation and escape points; and for safe evacuation and escape points<sup>23</sup>.

The duty holder must ensure that such arrangements are made which include, to the extent necessary, the provision of plant on the installation and such arrangements with suitable persons beyond the installation, as will ensure, so far as is reasonably practicable, the safe evacuation of all persons and their being taken to a place of safety, or to a place from which they can be recovered and taken to a place of safety under effective arrangements made in

that regard<sup>24</sup>. The duty holder must also provide such means as will ensure, so far as is reasonably practicable, the safe escape of all persons from the installation in case arrangements for evacuation fail<sup>25</sup>.

The relevant regulations<sup>26</sup> also impose duties on the duty holder with regard to the suitability of personal protective equipment for use in an emergency<sup>27</sup>, the suitability and condition of plant<sup>28</sup> and information regarding it<sup>29</sup> and the provision of life-saving appliances<sup>30</sup>.

1 'Duty holder' means (1) in relation to a production installation, the operator; and (2) in relation to a non-production installation, the owner: Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (definition substituted by SI 2005/3117). As to the meanings of 'production installation' and 'non-production installation' and operator' see PARA 733 note 1 (the definitions in the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (added or substituted by SI 2005/3117) are in identical terms to those there set out).

2 'Installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (see PARA 733 note 2): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1).

3 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) ('fire' means unplanned or uncontrolled fire).

4 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) ('explosion' means unplanned explosion).

5 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 4(1). Any more detailed requirements in regs 6-21 for the purposes referred to in reg 4(1) are without prejudice to the generality of reg 4(1): reg 4(2). 'Emergency response' means action to safeguard the health and safety of persons on or near an installation in an emergency; and 'emergency' means an emergency of a kind which can require evacuation, escape or rescue: reg 2(1). 'Evacuation' means the leaving of an installation and its vicinity, in an emergency, in a systematic manner and without directly entering the sea: reg 2(1).

The 1995 regulations apply (1) in Great Britain; and (2) to and in relation to installations and activities outside Great Britain to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, arts 4(1), (2)(b), 5, 6 (see PARA 305): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 3(1) (amended by SI 2005/3117). The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, regs 4-22 do not, however, apply in relation to an installation which is in transit to or from a station; and an installation is not in transit to or from a station while it is being manoeuvred at the station: reg 3(2).

Subject to reg 22(2) and to any of the provisions imposed by the European Union in respect of the encouragement of improvements in the safety and health of workers at work, the Health and Safety Executive may, by a certificate in writing, exempt any person, installation or class of persons or installations from any requirement or prohibition imposed by the 1995 regulations and any such exemption may be granted subject to conditions and with or without limit of time and may be revoked by a certificate in writing at any time: reg 22(1). The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and, in particular, to (a) the conditions, if any, which it proposes to attach to the exemption; and (b) any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 22(2).

6 As to the meaning of 'major accident' see PARA 723 note 4 (definition applied by the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (amended by SI 2005/3117)).

7 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 5(1), (2).

8 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 5(3).

9 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 6(1).

- 10 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 6(2).
- 11 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 7.
- 12 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 8(1).
- 13 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 8(2).
- 14 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 8(3).
- 15 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 8(4).
- 16 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 9(1). The measures to prevent ignition referred to in reg 9(1) must include (1) identifying and designating areas in which there is a risk of a flammable or explosive atmosphere occurring; (2) controlling the carrying on of hazardous activities in such areas; (3) ensuring that, save under procedures pursuant to head (2) above, no plant is used in such areas unless suitable for use within them; and (4) controlling the placing or use in such areas of electrical fixtures or other sources of ignition: reg 9(2).
- 17 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 10(a).
- 18 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 10(b).
- 19 Subject to the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 11(3) (transitional provisions), the duty holder must ensure that (1) an illuminated sign provided pursuant to reg 11(1)(a) is (a) in the case of a warning of toxic gas, a red flashing sign; and (b) in all other cases, a yellow flashing sign; and (2) an acoustic signal provided pursuant to reg 11(1)(a) is (a) in the case of a warning to prepare for evacuation, a continuous signal of variable frequency; (b) in the case of a warning of toxic gas, a continuous signal of a constant frequency; and (c) in all other cases, an intermittent signal of a constant frequency: reg 11(2). 'Acoustic signal' means a coded sound signal which is released and transmitted by a device designed for that purpose, without the use of a human or artificial voice; and 'illuminated sign' means a sign produced by a device made of transparent or translucent materials which are illuminated from the inside or the rear in such a way as to give the appearance of a luminous surface: reg 2(1).
- 20 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 11(1).
- 21 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 12.
- 22 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 13.
- 23 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 14(1). The duty holder must ensure that the muster areas, egress, access and evacuation and escape points referred to in reg 14(1) are kept unobstructed, are provided with adequate emergency lighting and are marked by suitable signs, and must take appropriate measures to ensure that, so far as is reasonably practicable, the egress and access remain passable in an emergency: reg 14(2). The duty holder must ensure that (1) doors for use in an emergency open in the appropriate direction or, if this is not possible, are sliding doors, and are not so fastened that they cannot readily be opened by any person who may require to use them in an emergency; and (2) accommodation areas are provided at each level with at least two means of egress situated a proper distance apart: reg 14(3). The duty holder must (a) ensure that (i) each person on the installation is assigned to a muster area; and (ii) for each muster area a list of names of persons assigned to it is kept up-to-date and displayed; and (b) establish procedures (i) for mustering at such areas; and (ii) for accounting for persons: reg 14(4).
- 24 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 15. The duty holder must ensure that effective arrangements are made, which must include such arrangements with suitable persons beyond the installation, for (1) recovery of persons following their

evacuation or escape from the installation; and (2) rescue of persons near the installation; and (3) taking such persons to a place of safety, and for these purposes arrangements are to be regarded as being effective if they secure a good prospect of those persons being recovered, rescued, and taken to a place of safety: reg 17 (amended by SI 2005/3117).

25 Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 16.

26 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743.

27 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 18. In relation to personal protective equipment which protects a person in an emergency against risks to his health and safety in conditions of fire, heat, smoke, fumes or toxic gas, or in the event of his immersion in the sea, the duty holder is to be treated, for the purposes of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966 (see PARA 523 et seq) as the only employer of all persons on the installation, and such persons must be treated as only employed by him: Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 18(1). The duty holder must ensure that there is prepared and operated a written scheme for the systematic examination and, where appropriate, testing, by a competent person, of the equipment referred to in reg 18(1) and for recording the results thereof: reg 18(2). 'Personal protective equipment' has the same meaning as in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 2(1) (see PARA 523 note 3): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1).

28 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 19 (amended by SI 2005/3117). The duty holder must ensure that all plant on the installation provided in compliance with the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743 (other than aircraft, or equipment to which reg 18 applies), (1) is so constructed or adapted as to be suitable for the purpose for which it is used or provided; and (2) is maintained in an efficient state, in efficient working order and in good repair: reg 19(1).

29 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 21. The duty holder must ensure that information, giving the location of (1) areas in which there is a risk of a flammable or explosive atmosphere occurring; (2) non-automatic plant for fighting fire; and (3) plant to which regs 18(1) and 20 apply (other than plant issued to particular persons), is available to all persons on the installation: reg 21.

30 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 20. The duty holder must ensure that survival craft, life-rafts, life-buoys, life-jackets and plant for like purposes (1) are of such colour as will make them conspicuous when in use; (2) are (where applicable) suitably equipped; and (3) are kept available for immediate use in sufficient numbers: reg 20.

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## **(5) BOREHOLE SITES AND OPERATIONS**

### **744. Health and safety regulations applying to borehole sites and operations.**

The Borehole Sites and Operations Regulations 1995 do not apply to offshore installations or activities carried out from such installations<sup>1</sup>. Subject to that, they apply to a self-employed person<sup>2</sup> as they apply to an employer and as if that self-employed person were both an employer and an employee<sup>3</sup>.

Where the owner<sup>4</sup> is not himself the operator<sup>5</sup> of a borehole site<sup>6</sup>, he must furnish the operator with all information in his possession needed to enable the operator to perform his duties under the relevant regulations<sup>7</sup>. In addition to any other duties imposed on the operator by those regulations, it is his duty to exercise overall control of the borehole site and to co-ordinate the measures taken by himself and every employer and self-employed person at the site to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions<sup>8</sup>. In relation to a borehole site, any duty imposed on an employer by those regulations is also imposed on the operator in so far as it relates to matters under his control<sup>9</sup>.

Every employer of persons at work at a borehole site, other than the operator, must co-operate with the operator, to the extent necessary to enable him to comply with the relevant statutory provisions at the site<sup>10</sup>.

In the case of petroleum<sup>11</sup>, the operator of a borehole site must ensure that no drilling operation, abandonment operation or other operation on a well<sup>12</sup> which would make a significant alteration to it, or involve a risk of the accidental release of fluids from the well or reservoir, is commenced at that site unless he has notified to the Health and Safety Executive the specified particulars<sup>13</sup> at least 21 days in advance, or such shorter time in advance as the Executive may agree<sup>14</sup>. The operator of a borehole site at which a borehole is intended to be drilled with a view to the extraction of minerals by mining<sup>15</sup> may not commence drilling that borehole unless he has notified to the Executive the specified particulars<sup>16</sup> at least 21 days in advance, or such shorter time in advance as the Executive may agree<sup>17</sup>. Where a borehole, other than a borehole to which either of these provisions relates, is being drilled within a mining area<sup>18</sup> to a depth of 30 metres or more, the person entitled to drill the borehole must, within 30 days after the commencement of its drilling, notify to the Executive the specified particulars<sup>19</sup>.

The operator of a borehole site at which a borehole, drilled with a view to the extraction of minerals by mining, is being abandoned must, within 21 days after the commencement of its abandonment, notify to the Executive the specified particulars<sup>20</sup>.

The operator of a borehole site or, in the case of certain particulars previously notified<sup>21</sup>, the person entitled to drill the borehole, must ensure that the Executive is notified as soon as reasonably practicable<sup>22</sup> of any material change of circumstances which would affect particulars previously notified under the above provisions<sup>23</sup>. Where, in pursuance of these provisions, plans and other documents have been sent to the Executive they must be retained by the Executive or in accordance with arrangements approved by the Executive<sup>24</sup>.

The Executive may<sup>25</sup>, by a certificate in writing, exempt any person, borehole, borehole site, or class of persons, boreholes or borehole sites from any requirement or prohibition imposed by the above provisions regarding notification; and any such exemption may be granted subject to

conditions and with or without limit of time and may be revoked by a certificate in writing at any time<sup>26</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and, in particular, to the conditions, if any, which it proposes to attach to the exemption and to any other requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>27</sup>.

No borehole operation may be commenced at a borehole site unless the operator has ensured that a document (the 'health and safety document') has been prepared, which:

- 1615 (1) demonstrates that the risks to which persons at the borehole site are exposed whilst they are at work have been assessed<sup>28</sup>;
- 1616 (2) demonstrates that adequate measures, including measures concerning the design, use and maintenance of the borehole site and of its plant, will be taken to safeguard the health and safety of the persons at work at the borehole site; and
- 1617 (3) includes a statement of how the measures referred to in head (2) above will be co-ordinated<sup>29</sup>.

In addition to the matters referred to in heads (1) to (3) above, the health and safety document must also include where appropriate:

- 1618 (a) an escape plan with a view to providing employees with adequate opportunities for leaving work places promptly and safely in the event of danger and an associated rescue plan with a view to providing assistance where necessary;
- 1619 (b) a plan for the prevention of fire and explosions including in particular provisions for preventing blowouts and any uncontrolled escape of flammable gases and for detecting the presence of flammable atmospheres;
- 1620 (c) a fire protection plan detailing the likely sources of fire and the precautions to be taken to protect against, detect and combat the outbreak and spread of fire; and
- 1621 (d) in the case of a borehole site where hydrogen sulphide or other harmful gases are or may be present, a plan for the detection and control of such gases and for the protection of employees from them<sup>30</sup>.

The operator must ensure that the health and safety document is kept up to date and is made available to each employer of persons at work at the site<sup>31</sup>. Each employer of persons at work at the site must have regard to the health and safety document in meeting his obligations under the relevant statutory provisions<sup>32</sup>.

The operator must ensure that every workplace<sup>33</sup> on a borehole site is designed, constructed, erected and maintained and has sufficient stability to afford adequate protection for employees and to withstand the environmental forces anticipated at the site<sup>34</sup>. The operator must also ensure that adequate means are provided and maintained for the prompt and swift escape and where necessary the rescue of employees from workplaces in the event of danger and for communicating and giving warning when escape or rescue is necessary<sup>35</sup>.

Without prejudice to the requirements of the other relevant statutory provisions relating to the borehole site, it is the duty of every employer of persons at work on a borehole site to ensure that the additional health and safety provisions prescribed<sup>36</sup> are applied as they are appropriate having regard to the nature and circumstances of the work carried on there and to the provisions of the health and safety document<sup>37</sup>.

An employer of a person engaged in borehole operations must ensure that he is provided with such health surveillance as is appropriate<sup>38</sup>; and where that person is assigned to the work after 1 October 1995<sup>39</sup>, the health surveillance must be commenced before he is so assigned<sup>40</sup>.

In any proceedings for an offence under the above provisions it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence<sup>41</sup>.

1 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 3(1). As to offshore installations see PARA 720 et seq.

2 As to the meaning of 'self-employed person' see PARA 302 note 5.

3 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 3(2). As to the meaning of 'employee' see PARA 302 note 4.

4 'Owner', in relation to a borehole site, means the person who has the right to undertake the borehole operations which are being or are to be undertaken at the site: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1). Any reference for these purposes to a borehole operation is a reference to an activity or operation in the course or furtherance of, or in connection with the cessation of (1) the extraction of minerals by a borehole; (2) prospecting with a view to such extraction; or (3) prospecting by a borehole, other than a borehole drilled from within the underground workings of a mine which is in use, with a view to the extraction of minerals by means other than a borehole, or to the preparation for sale, but not the processing, of extracted minerals at the place of any such activity or operation: reg 2(2). As to the meaning of 'borehole site' see note 6.

5 'Operator' in relation to a borehole site means (1) a person appointed by the owner in writing to exercise for the time being the function of organising or supervising borehole operations at the site, where that function involves the exercise of overall control of the borehole site; or (2) where for the time being there is no such person, the owner: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1).

6 'Borehole site' means a place at which a borehole operation: (1) is being or is to be undertaken; or (2) has been undertaken, save where all borehole operations have ceased and all boreholes have been abandoned: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1).

7 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 4(1). The regulations referred to are the Borehole Sites and Operations Regulations 1995, SI 1995/2038: see the text and notes 1-6, 8-41.

8 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 4(2). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

9 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 4(3).

10 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 5.

11 For these purposes, 'petroleum' means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(7).

12 'Well' includes any borehole associated with that well: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1).

13 The specified particulars are those set out in the Borehole Sites and Operations Regulations 1995, SI 1995/2038, Sch 1 Pt I. As to the Health and Safety Executive see PARA 361 et seq. The particulars required for a notification under reg 6(1) are as follows: (1) name and address of the operator; (2) particulars of the type of well, its number and its name; (3) particulars of the rig or other plant which is to be used in connection with the operations on the well; (4) particulars of the surface equipment and of the circulation fluids to be used to control the pressure of the well; (5) particulars, with scale diagrams, where appropriate, of (a) the Ordnance Survey National Grid reference of the location of the top of the well; (b) the directional path of the borehole; (c) the terminal depth and location; and (d) its position and that of nearby wells and mine workings relative to each other; (6) a description of operations to be performed and a programme of works including (a) the dates on which operations are expected to start and finish; and (b) a diagram showing details of the intended final completion or recompletion of the well; (7) a description of (a) any activities during operations on the well which will involve a risk of the accidental release of fluids from the well or reservoir; and (b) such hazards; (8) in the case of a well which is to be drilled: (a) particulars of the geological strata and formations and fluids within them



through which it may pass and of any hazards with the potential to cause fire, explosion or a blowout which they may contain; (b) the procedures for effectively monitoring the direction of the borehole and the effects of intersecting nearby wells; and (c) particulars of the design of the well, sufficient to show that it takes account of the matters in head (a) above and that it will so far as is reasonably practicable be safe; (9) in the case of an existing well: (a) a diagram of the well; (b) a brief history of the well including a summary of previous operations and any problems encountered; and (c) its present status and condition; (10) in the case of an abandonment operation details of the proposed sealing or treatment: Sch 1 Pt I.

14 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(1).

15 'Mining' does not include opencast mining: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1).

16 Ie the particulars set out in the Borehole Sites and Operations Regulations 1995, SI 1995/2038, Sch 1 Pt II. The particulars required for a notification under reg 6(2) are as follows: (1) name and address of the operator; (2) particulars with scale diagrams, where appropriate, of (a) the Ordnance Survey National Grid reference of the location of the top of the borehole; (b) its directional path; and (c) its terminal depth and location; (3) a description of the operations to be performed and a programme of works which includes the dates on which operations are expected to start and finish: Sch 1 Pt II.

17 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(2).

18 'Mining area' means land (1) within 1 km, in a horizontal or other direction, of the workings in a mine (whether disused or not); or (2) in relation to which a licence to mine for minerals has been granted: Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1).

19 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(3). The specified particulars are those set out in Sch 1 Pt III. The particulars required for a notification under reg 6(3) are as follows: (1) name and address of the person entitled to drill the borehole; (2) particulars with scale diagrams, where appropriate, of (a) the Ordnance Survey National Grid reference of the location of the top of the borehole; (b) its directional path; and (c) its terminal depth and location; (3) a description of the operations to be, or being, performed and a programme of works which includes the dates on which operations are expected to start and finish or (if past) the dates they started and finished: Sch 1 Pt III.

20 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(4). The specified particulars are those set out in Sch 1 Pt IV. The particulars required for a notification under reg 6(4) are as follows: (1) name and address of the operator; (2) particulars with scale diagrams, where appropriate, of (a) the Ordnance Survey National Grid reference of the location of the top of the borehole; (b) its directional path; and (c) its terminal depth and location; (3) details of the sealing or other treatment: Sch 1 Pt IV.

21 Ie particulars notified under the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(3): see note 19.

22 As to what is reasonably practicable see PARA 417.

23 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(5).

24 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(6).

25 Ie subject to the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(9) and to any of the provisions imposed by the European Union in respect of the encouragement of improvements in the safety and health of workers at work: reg 6(8).

26 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(8).

27 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 6(9).

28 Ie assessed in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.

29 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 7(1), (5) (reg 7(5) amended by SI 1999/3242).

30 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 7(2).

31 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 7(3) (amended by SI 1999/2463).

32 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 7(4).

33 For these purposes, 'workplace' has the same meaning as in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) (see PARA 456): Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 8(3).

34 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 8(1).

35 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 8(2).

36 In the additional health and safety provisions set out in the Borehole Sites and Operations Regulations 1995, SI 1995/2038, Sch 2. Those requirements are as follows (see Sch 2):

- 16 (1) delineation and provision of safety signs: areas where there is a special hazard must be delineated and appropriate safety signs placed;
- 17 (2) person in charge and supervision: a competent person appointed by the operator must be in charge of every borehole site where employees are present and there must be sufficient competent persons appointed by the operator to exercise immediate supervision of borehole operations with a view to ensuring the health and safety of the persons at work at the site;
- 18 (3) provision of competent persons: where borehole operations are carried on, there must be provided a sufficient number of competent persons with a view to enabling those operations to be carried on safely;
- 19 (4) written instructions: (a) where borehole operations are carried on, employers must provide written instructions containing rules necessary for ensuring the health and safety of their employees and information on the use of emergency equipment and the action to be taken in the event of an emergency at or near the borehole site; (b) copies of those written instructions must be made available to all employees who may be affected by them;
- 20 (5) work permits: (a) where borehole operations are carried on and it is shown in the health and safety document that such a measure is necessary, a system of work permits must be introduced for carrying out hazardous operations and usually straightforward operations which may interact with other activities to cause serious hazards; (b) work permits must specify the conditions to be fulfilled and the precautions to be taken before, during and after the work concerned and must be issued by the person in charge of those operations in accordance with a scheme agreed with the operator of the borehole site;
- 21 (6) maintenance: (a) where borehole operations are carried on, a suitable scheme must be set up for the systematic examination, maintenance and, where appropriate, testing of mechanical and electrical equipment and plant; (b) all examination, maintenance and testing must be carried out by competent persons and a record of any examination and tests must be made and kept for at least three years after the equipment or plant concerned was last used; (c) heads (a) and (b) above also apply in relation to the safety equipment provided, with a view to ensuring that it is ready for use and in good working order at all times having regard to the uses to which it may be put;
- 22 (7) well control: (a) suitable well control equipment must be provided for use during borehole operations to protect against blowouts having regard to the provisions of the health and safety document; (b) the deployment of such equipment must take into account the prevailing well and operational conditions;
- 23 (8) harmful atmospheres: where there is a risk that employees may be exposed to atmospheres that are hazardous to health, there must be provided: (a) sufficient appropriate breathing and resuscitation equipment and apparatus; and (b) a sufficient number of employees trained to use the apparatus present at the borehole site;
- 24 (9) prevention of explosions: where there is a risk of explosion, all necessary measures must be taken with a view to (a) preventing the occurrence and accumulation of explosive atmospheres; and (b) preventing the ignition of explosive atmospheres;
- 25 (10) remote control in emergencies: (a) where the health and safety document shows that such a measure is necessary, certain equipment must be capable of remote control from suitable locations in the event of an emergency; (b) that equipment must, in any case, include systems for the isolation and blowdown of wells, plant and pipelines;

- 26 (11) communications, general and emergency: (a) where the health and safety document shows that such a measure is necessary, every borehole site at which employees are present must be provided with an acoustic and optical system capable of transmitting an alarm to every part of the site as necessary and with an acoustic system capable of being heard distinctly at all parts of the site where employees are frequently present; (b) the facilities for raising the alarm must be situated at suitable places; (c) where employees are present at sites that are not usually manned, appropriate means of communication must be placed at their disposal;
- 27 (12) means of evacuation and escape: (a) employees must be trained in appropriate action to be taken in the event of an emergency; (b) rescue equipment must be provided at readily accessible and appropriately sited places and kept ready for use; (c) where escape routes are difficult and where irrespirable atmospheres are or may be present, self-contained escape apparatus must be provided for immediate use by employees at the workstation;
- 28 (13) safety drills: (a) safety drills must be held at regular intervals at all borehole sites at which employees are usually present; (b) the main purpose of such drills must be to train and check the skills of persons to whom specific duties have been assigned in the event of an emergency involving the use, handling or operation of emergency equipment taking into account the criteria laid down in the health and safety document; (c) where appropriate, employees who have been so assigned must also be drilled in the correct use, handling or operation of that equipment;
- 29 (14) fire detection and fire-fighting: (a) adequate measures must be taken to prevent fires from starting and spreading from sources identified in the health and safety document; (b) provision must be made for fast and effective fire-fighting; (c) borehole sites must be equipped with appropriate fire-fighting equipment and as necessary with fire detection and alarm systems; (d) non-automatic fire-fighting equipment must be easily accessible and simple to use and where necessary protected from damage; (e) the fire protection plan referred to in reg 7(2)(c) must be kept available on the site;
- 30 (15) safe assembly points and muster list: where required in the health and safety document, safe assembly points must be specified, muster lists maintained and the necessary action must be taken.

'Competent' in relation to a person means competent by way of sufficient training and experience or knowledge and other qualities properly to perform or assist in performing the work which that person is required to do: reg 2(1).

37 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 9(1), (2).

38 'Appropriate' means appropriate having regard to the nature and magnitude of the risks to the safety and health of the person referred to in the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 10(1): reg 10(2).

39 I.e the date of the coming into force of the 1995 regulations: see the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 1.

40 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 10(1).

41 Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 11. As to offences and penalties see PARA 852 et seq.

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## (6) AGRICULTURE

### 745. Tractor cabs.

The sale or letting on hire<sup>1</sup> to a person of a new<sup>2</sup> tractor<sup>3</sup> for use by him in agriculture<sup>4</sup> in Great Britain is prohibited unless it is properly fitted<sup>5</sup> with a safety cab<sup>6</sup> which is approved<sup>7</sup> for use with that tractor and marked both with a specified approval mark<sup>8</sup> and with supplementary marks which relate to the approval mark and which include the name of the make of tractor and the name or number of the model<sup>9</sup>. The sale or letting on hire of a new safety cab for use in agriculture in Great Britain is prohibited unless the cab is approved and marked with the appropriate approval and supplementary marks<sup>10</sup>. The letting on hire of a tractor for such use is also prohibited unless it is properly fitted with a safety cab marked with the appropriate approval mark<sup>11</sup>.

The employer of a worker employed in agriculture must ensure that every tractor driven by that worker in the course of his employment<sup>12</sup> is properly fitted with a safety cab marked with the appropriate approval mark and, so far as is reasonably practicable, that every safety cab fitted to such a tractor is approved for use with that tractor<sup>13</sup>. Such a worker must not drive a tractor in the course of his employment unless it is so fitted<sup>14</sup>, and must not knowingly drive a tractor which is fitted with a safety cab which is not approved for use with that tractor<sup>15</sup>, nor may any person cause or permit him to do either<sup>16</sup>.

A worker employed in agriculture to drive or maintain a tractor fitted with a safety cab marked with the approval mark must report at once to his employer the tractor overturning, or any damage to the cab, the fittings which secure it to the tractor, or the windscreen wiper<sup>17</sup>.

No person other than the manufacturer may apply a mark to a safety cab to suggest that the cab is approved, approved for use with a tractor of a specified description, or approved as being of a particular standard, unless the Health and Safety Executive consents<sup>18</sup>, and no person may apply any mark calculated falsely to suggest such approval<sup>19</sup>. Unless the Health and Safety Executive consents in writing, no one other than the manufacturer may alter, remove, obliterate or deface any such mark<sup>20</sup>.

The Health and Safety Executive may grant certificates of exemption from these provisions, and any conditions of the exemption must be complied with<sup>21</sup>.

1 A tractor or safety cab made the subject of a contract of hire purchase is deemed for the purpose of the relevant regulations to be sold, and not let on hire: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(2).

2 'New' means not previously sold to any purchaser for use by him in agriculture: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(1).

3 'Tractor' means a wheeled tractor weighing 560 kg or more when assembled in the lightest form commercially available, without fuel, water or lubricating oil, but does not include a half-tracked vehicle or a steam traction engine: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(1) (amended by SI 1981/1414).

4 For these purposes (1) 'agriculture' includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds, and 'agricultural' is to be construed

accordingly; (2) 'worker' means a person employed under a contract of service or apprenticeship and 'employer' and 'employed' have corresponding meanings: Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 24(1) (definitions applied by the Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(1)). As to the 1956 Act, many of the provisions of which have now been repealed, see PARA 344.

5 A tractor is properly fitted with a safety cab if the cab is so maintained and fitted to the tractor as to afford the protection (including protection from noise) for which it is designed, and equipped with an efficient automatic wiper for any windscreen it may have: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(3).

6 A 'safety cab' is a rigid framework or cab designed to protect the driver of a tractor to which it is fitted from being crushed if the tractor overturns, and includes a safety frame: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(1).

7 'Approved' means approved in accordance with the Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 3 for use with a tractor; and any safety cab which is marked with a component type-approval mark in accordance with (1) EC Council Directive 77/536 (OJ L220, 29.08.1977, p 1) relating to the roll-over protection structures of wheeled agricultural or forestry tractors, as amended by EC Council Directive 87/354 (OJ L192, 11.07.1987, p 43); (2) EC Council Directive 79/622 (OJ L179, 17.07.1979, p 1) relating to the static testing of the roll-over protection structures of wheeled agricultural or forestry tractors, as amended by EC Council Directive 87/354 and as adapted to technical progress by EC Commission Directives 82/953 (OJ L386, 31.12.1982, p 31) and 88/413 (OJ L200, 26.07.1988, p 32); or (3) EC Council Directive 86/298 (OJ L186, 08.07.1986, p 26) relating to the rear-mounted roll-over protection structures of narrow-track wheeled agricultural and forestry tractors; or (4) EC Council Directive 87/402 (OJ L220, 08.08.1987, p 1) relating to the roll-over protection structures mounted in front of the driver's seat on narrow-track wheeled agricultural and forestry tractors, is to be deemed to be approved and correctly marked with the appropriate approval mark and supplementary marks in accordance with that regulation if it is fitted to and for use with a tractor of the type to which it was attached when tested pursuant to the relevant Directive specified above, and the driver-perceived noise level is within either of the limits specified in EC Council Directive 77/311 (OJ L105, 28.04.1977, p 1) relating to the driver-perceived noise level of wheeled agricultural or forestry tractors, art 2.1 when measured in accordance with the relevant Annex to that Directive: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 2(1) (amended by SI 1990/1075). The Health and Safety Executive may approve a safety cab of any model for use with a tractor of any description by issuing a certificate of approval to that effect to the manufacturer of the safety cab: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 3(1) (reg 3(1), (4), (9), (10), (12) amended by SI 1976/1247). Before issuing a certificate of approval the Executive must be satisfied that safety cabs of the model to which it relates would be capable of satisfying the requirements relating to protective cabs set out in EC Council Directive 77/536 (OJ L220, 29.08.1977, p 1) (as amended by EC Council Directive 87/354); EC Council Directive 79/622 (as amended by EC Council Directive 87/354 and as adapted to technical progress by EC Commission Directives 82/953 and 88/413); EC Council Directive 86/298; or EC Council Directive 87/402 when fitted to tractors of descriptions specified in the certificate: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 3(2) (reg 3(2), (11) amended by SI 1976/1247 and SI 1990/1075).

In the case of a certificate issued after 14 June 1990 the Health and Safety Executive must also be satisfied that the noise level within the cab comes within the limits specified in EC Council Directive 77/311, art 2.1: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 3(3) (reg 3(3), (5) amended by SI 1990/1075). Where the Health and Safety Executive is satisfied as above, that fact must be stated in the certificate: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 3(4) (as so amended). Unless the Executive has been satisfied as to this noise level in relation to safety cabs of a particular model, and that fact is stated in the certificate of approval, a safety cab of that model fitted to a tractor which was new on or after 1 June 1976, or such a safety cab itself new on or after 1 September 1977, is not approved: reg 3(5) (as so amended). Certificates of approval may prescribe specifications (which may be prescribed by reference to documents other than the certificate of approval, by reference to specimens of safety cabs or other materials, or otherwise) for the construction of safety cabs of the model to which they relate. Unless a safety cab is constructed in accordance with any such specifications, it is not a safety cab of that model: reg 3(6), (7). If an approved safety cab is materially changed as a result of damage, alteration, neglect or any other cause it ceases to be approved: reg 3(8).

Certificates may be amended or revoked by the Health and Safety Executive by a minimum of one month's written notice: reg 3(9) (as so amended). It is a condition of every certificate that the manufacturer to whom it is issued must cause every safety cab approved under the certificate to be marked with the correct approval mark and supplementary marks before it is sold or let on hire, and must make any safety cab manufactured by him available at any reasonable time before sale for inspection by or on behalf of the Executive and submit any safety cab which is or is intended to be approved under a certificate to such tests as the Executive requires, provided that the Executive may not require such a test unless in its opinion there is reason to believe that the safety cab is not of the model to which the certificate relates, or is not capable of satisfying the construction and testing requirements of the EC Council Directives listed above: reg 3(10), (11) (as so amended). If a manufacturer fails to comply with such a condition, the certificate may be revoked forthwith by a notice in

writing from the Health and Safety Executive, but no amendment or revocation of a certificate affects any approved safety cab sold before the amendment or revocation takes effect: reg 3(12), (13) (as so amended).

As to the Health and Safety Executive see PARA 361 et seq.

8 'Approval mark' means one of two marks, incorporating a crown inside a triangle, illustrated in the Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, Schedule Pt I para 1: reg 2(1). Safety cabs must be marked in the following manner: (1) every mark required by the 1974 regulations must be on the main structure of the safety cab; (2) every such mark must be clear, legible and permanent, and in a prominent and easily accessible position; (3) the name of the make or model of a tractor may be represented by a recognisable abbreviation of that name; (4) where a model of tractor is referred to, it must be described in such a way as not to include any tractor for use with which the safety cab is not approved; (5) supplementary marks relating to the same approval mark must be as near as is reasonable practicable to the approval mark and to each other; (6) where there is more than one approval mark on a safety cab the supplementary marks relating to each must be separate and clearly distinguishable from those relating to the other: Schedule Pt II.

9 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 4(a).

10 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 4(b).

11 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 4(c).

12 As to equipment used in the employer's business see PARA 413 note 3.

13 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 5(1). As to what is reasonably practicable see PARA 417. Regulation 5 does not apply to a tractor being used for an agricultural operation in a hop-garden, hop-yard or orchard, where it is not reasonably practicable to use the tractor for that purpose if it is fitted with an approved safety cab, or where it is being driven to or from a hop-garden, hop-yard or orchard for the purpose of, or after, being used there; or while being used inside or in close proximity to a building, for the purpose of carrying out an agricultural operation within that building, where it is not reasonably practicable by reason of the height, shape or construction of the building to use the tractor if it is fitted with an approved safety cab, or for the purpose of, or after, being used there (unless it is at the same time engaged in, or being driven from or to the site of, any agricultural operation for which a safety cab is required by reg 5: reg 5(4).

14 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 5(2); and see note 13.

15 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 5(3); and see note 13.

16 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 5(2), (3); and see note 13.

17 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 6.

18 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 7(1) (reg 7(1), (4) amended by SI 1976/1247). The consent must be in writing: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 7(1). A person applies a mark if he fixes it or annexes it to the safety cab, or in any manner marks it on or incorporates it with the cab: reg 7(5).

19 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 7(2). The application of a mark by the manufacturer before the time the cab is first sold or let on hire does not give rise to a contravention of reg 7 unless the mark remains on the cab until that time, in which case the manufacturer is deemed to have applied the mark to the safety cab at that time: reg 7(3).

20 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 7(4) (as amended: see note 18).

21 Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 8(1) (amended by SI 1976/1247). Any exemption may be for a specified period, and subject to specified conditions: Agriculture (Tractor Cabs) Regulations 1974, SI 1974/2034, reg 8(1). Any breach of a condition imposed by such a certificate of exemption renders the certificate void whilst the breach continues in relation to any tractor or safety cab affected by the breach: reg 8(2).

## UPDATE

### 745 Tractor cabs

NOTE 7--Directive 77/311 replaced: European Parliament and EC Council Directive 2009/76 (OJ L201, 1.8.2009, p 18). Directive 77/536 replaced: European Parliament

and EC Council Directive 2009/57 (OJ L261, 3.10.2009, p 1). Directive 79/622 replaced:  
European Parliament and EC Council Directive 2009/75 (OJ L261, 3.10.2009, p 40).

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#### **746. Prevention of accidents to children in agriculture.**

Subject to the following provision, no person may cause or permit a child under the age of 13 years<sup>1</sup> to ride on a:

- 1622 (1) tractor<sup>2</sup>;
- 1623 (2) self-propelled agricultural<sup>3</sup> machine;
- 1624 (3) trailer<sup>4</sup>;
- 1625 (4) machine or agricultural implement mounted in whole or in part on, or towed or propelled by, a tractor or other vehicle;
- 1626 (5) machine or agricultural implement drawn by an animal,

while it is being used in the course of agricultural operations or is going to or from the site of such operations<sup>5</sup>. This does not, however, apply to a trailer in circumstances where the child rides on its floor or on a load carried by it, and where it possesses adequate means for preventing the child's falling from it<sup>6</sup>.

No person may cause or permit such a child to drive a tractor or self-propelled vehicle or machine while it is being used in the course of agricultural operations or is going to or from the site of such operations<sup>7</sup>.

It is, however, a defence for a person charged with a contravention of a provision set out above to prove that he used all due diligence to secure compliance with that provision<sup>8</sup>.

1 In the Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, unless the context otherwise requires, 'child' means a child who is under the age of 13 years: reg 2(1).

2 For these purposes, any reference to a tractor, machine, trailer, implement or other vehicle includes any drawbar, towbar or coupling which may be used for the purpose of towing or propelling: Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 2(2).

3 'Agricultural' means relating to agriculture, which includes dairy-farming, the production of consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds; and 'consumable produce' means produce grown for consumption or for other use after severance from the land on which it is grown: Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 2(1).

4 'Trailer' means a vehicle used as a trailer whether or not designed to be so used, but does not include a vehicle drawn by an animal: Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 2(1).

5 Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 3(1).

6 Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 3(2).

7 Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 4.

8 Prevention of Accidents to Children in Agriculture Regulations 1998, SI 1998/3262, reg 5. As to criminal proceedings see PARA 852 et seq.



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#### **747. Inquests in cases of death by accident.**

Where a coroner holds an inquest on the body of a person whose death may have been caused by an accident occurring in the course of agricultural operations<sup>1</sup>, he must adjourn the inquest unless an inspector<sup>2</sup> or some other person on behalf of the Health and Safety Executive<sup>3</sup> is present to watch the proceedings, and must give an inspector at least four days' notice of the time and place of the adjourned inquest<sup>4</sup>. Before adjourning, he may take evidence to identify the body and may order interment<sup>5</sup>. If, however, the inquest relates to the death of only one person and the coroner has informed an inspector of the time and place of the inquest not less than 24 hours before holding it, he is not bound to adjourn it<sup>6</sup>.

Where evidence is given at any inquest at which an inspector is not present of any neglect as having caused or contributed to the accident, or of any defect in any building, structure, machinery, plant, equipment or appliance appearing to the coroner or jury to require a remedy, the coroner must give the inspector notice of the neglect or defect<sup>7</sup>.

1 As to the meaning of 'agricultural' see PARA 745 note 4.

2 'Inspector' means an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19 (see PARA 375): Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 24(1) (definition substituted by SI 1976/1247).

3 As to the Health and Safety Executive see PARA 361 et seq.

4 Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 9(1) (amended by virtue of SI 1976/1247).

As to the appointment and powers of coroners see generally **CORONERS**.

5 Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 9(1) proviso (a).

6 Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 9(1) proviso (b).

7 Agriculture (Safety, Health and Welfare Provisions) Act 1956 s 9(2).

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## **(7) MINES**

### **(i) Management and Administration of Health and Safety in Mines**

#### ***A. MANAGEMENT AND ADMINISTRATION; IN GENERAL***

##### **748. Management structure at mines.**

The management and administration of health and safety at mines is now governed largely by regulations<sup>1</sup>. Duties are imposed on owners<sup>2</sup>, managers<sup>3</sup>, employers<sup>4</sup> and employees, and requirements for a management structure<sup>5</sup> are laid down.

No mine may be worked<sup>6</sup> unless there is a sole manager of the mine, who must be a suitably qualified and competent person<sup>7</sup> duly appointed<sup>8</sup> by the owner; if the owner is an individual and suitably qualified<sup>9</sup> and competent, he may appoint himself<sup>10</sup>. Where, however, a mine can be divided into and worked as separate parts by reason of its geography, the owner may so divide the mine and appoint a sole manager for each part where this is necessary for the effective discharge of each manager's duties, and the manager of a part of a mine is treated as a manager appointed in relation to that part<sup>11</sup>. The owner must appoint a suitably qualified and competent person as a substitute manager when the manager is temporarily not readily available or the post of manager is vacant<sup>12</sup>; where such an appointment is made, the mine must be returned to the control of the manager within 72 days or such longer period thereafter as the Health and Safety Executive may approve<sup>13</sup>.

The manager of a mine has the management, command and control of the mine exercisable subject to any instructions given to him by or on behalf of the owner<sup>14</sup>. The mine must not be worked unless it is under the daily personal supervision of the manager<sup>15</sup>. An individual may not be appointed to manage more than one mine unless it is practicable<sup>16</sup> for him to exercise such daily personal supervision and the owner of each mine concerned has notified the Health and Safety Executive of the appointment<sup>17</sup>.

With a view to ensuring the health, safety and welfare of persons at work at the mine, the owner and manager must establish a management structure (which must include the manager) that is suitable for the mine, and ensure that a sufficient number of suitably qualified and competent persons are appointed in the management structure<sup>18</sup>. The management structure must be set down in writing and define the extent of authority and responsibility of the persons in it<sup>19</sup>. The management structure must provide in particular (1) that all persons below ground in all areas of the mine are under the command of persons in the management structure who have the duty to exercise thorough supervision of those persons at all times; (2) that where more than one person with supervisory duties as above is on duty at the mine, there are arrangements within the management structure for a suitable chain of command from the manager to any such persons; and (3) adequate assistance to the manager in the performance of his statutory duties, including any duties relating to health, safety and welfare assigned to him by the owner<sup>20</sup>. To the extent of his responsibility and authority under the management structure and subject to any instructions given to him by a more senior person within the management structure, every person in the management structure must carry out the duties allocated to him with all due diligence, must so far as practicable ensure compliance with the

relevant statutory provisions and, so far as is practicable by the exercise of supervision, must ensure the safety of all persons below ground at the mine for whom he is responsible<sup>21</sup>. Every person in the management structure must give precedence to his duties relating to health, safety and welfare over any other duties he may have and at the end of any period of duty must communicate with other persons to give them all information necessary for health, safety and welfare<sup>22</sup>.

1 See the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897. These regulations, which came into force on 1 October 1993 (reg 1), apply to all mines, except where otherwise expressly provided (reg 3(1)). They apply to a self-employed person (as they do to an employer and an employee) as if the self-employed person were both an employer and an employee: reg 3(2). As to the meanings of 'self-employed person' and 'employee' see PARA 302 notes 4-5. 'Mine' means any mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1; and **MINES, MINERALS AND QUARRIES**): Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1) (definition substituted by SI 1995/2005).

The Health and Safety Executive (as to which see PARA 361 et seq) may by a certificate in writing exempt any mine, or part of a mine or class of mines or any person or class of persons from all or any of the prohibitions and requirements of the regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 38(1). Where a mine is for the time being solely used for a purpose other than for, or in connection with, the getting of minerals or ensuring the safety of the mine, the Executive may by a certificate in writing exempt that mine from all or any of the prohibitions and requirements imposed by or under the Mines and Quarries Act 1954, orders and regulations made under or having effect as if made under that Act, and health and safety regulations (as to which see PARAS 424-425) which expressly apply to all mines, to any class of mine to which the mine belongs, or the mine, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 38(2). In any case, the Executive must not grant any exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 38(3). The regulations are supported by an approved code of practice. As to codes of practice approved by the Health and Safety Executive see PARA 426; and as to failure to comply with any provision of the code see PARA 427.

Information and guidance about health and safety in mines is available on a dedicated page of the Health and Safety Executive's internet site, accessible at the date at which this title states the law at [www.hse.gov.uk](http://www.hse.gov.uk). As to mines legislation generally see PARA 343.

2 See PARA 749. As to the meaning of 'owner' see PARA 749 note 2.

3 See PARA 750. As to the meaning of 'manager' see PARA 750 note 1.

4 See PARA 751. 'Employer' includes the owner of a mine if he employs persons at work at the mine: reg 2(1).

5 'Management structure' has the meaning assigned by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10 (see the text and notes 17-20): reg 2(1).

6 A mine is treated as being worked at any time when there are persons at work below ground or plant or equipment is in operation at the mine to maintain the safety of that mine or of any other mine or the operation of driving a shaft or outlet is being undertaken at the mine: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(3).

7 A person is suitably qualified for a particular position if he holds the qualifications, attested by a valid certificate of qualification issued under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 18, approved for that position under reg 17(1) (see PARA 836) or, where no such qualification has been approved, he is suitably qualified by way of education, knowledge and experience to undertake the duties of that position effectively: reg 2(2). 'Approved' means approved for the time being in writing by the Health and Safety Executive, and 'approve' and 'approval' are to be construed accordingly: reg 2(1). 'Competent person' means a person who, on a fair assessment of the requirements of the task, of the factors involved, the problems to be studied and the degree of risk of danger implicit, can fairly and reasonably be regarded as competent: *Brazier v Skipton Rock Co Ltd* [1962] 1 All ER 955, [1962] 1 WLR 471. See also PARA 750 note 7.

8 'Appoint', in relation to a person, means appoint in writing with a written statement summarising his responsibilities and authority; and 'appointed' and 'appointment' are construed accordingly: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1).

9 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(1), (2).

10 le under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8.

11 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 15(1). The owner must ensure co-ordination at the mine and that suitable arrangements are made to deal with emergencies: reg 15(2). A plan clearly showing how the mine has been divided and indicating the points of separation of each part must be kept in the covered accommodation (provided in accordance with reg 36: see PARA 752) of each such part of the mine to which the plan relates: reg 15(3).

12 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(3). For the period that he is so appointed, such substitute is deemed to be the manager for the purposes of the relevant statutory provisions, but such appointment does not relieve the manager of the powers or duties conferred or imposed by or under those provisions while he holds or held the post of manager of the mine: reg 8(5).

13 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(4).

14 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 9(1). Any instructions given by or on behalf of the owner to the manager of a mine which relate to the duties of the manager under the relevant statutory provisions must be confirmed in writing by the owner if the manager so requests: reg 16(1). Where the manager is of the opinion that instructions given to him by or on behalf of the owner are, or are likely to be, prejudicial to his duties under the relevant statutory provisions or to the health or safety of persons employed at the mine, he may refuse to carry out such instructions unless they have been confirmed in writing by a person who is suitably qualified and competent to be the manager of the mine concerned and who is duly authorised by the owner: reg 16(2). No instruction which relates, or is likely to relate, to the responsibilities of the manager under the relevant statutory provisions must be given by or on behalf of the owner to any person at work at the mine (other than the manager) except (1) by, or with the consent of, the manager; or (2) in an emergency, and any instructions so given in an emergency must be confirmed in writing by the owner if the manager so requests: reg 16(3). Copies of any instruction which has been confirmed in writing in accordance with the above provisions must be kept by the manager and the owner for at least three years from the date on which the instruction ceased to have effect: reg 16(4). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

15 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 9(2).

16 As to the meaning of 'practicable' see PARA 417.

17 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 14.

18 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(1).

19 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(1) (a).

20 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2). An individual who is, or who is employed by, a person to whom the owner has contracted to undertake other work at the mine or another mine of the owner must not be appointed to the management structure except as a person appointed solely to exercise thorough supervision under head (1) in the text: reg 10(6).

21 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(4).

22 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(5). In imposing duties on persons to be appointed to the management structure, the manager must have regard to this requirement as it affects such persons: reg 9(4).

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#### **749. Duties of mine owner.**

A mine<sup>1</sup> must not be worked unless its owner<sup>2</sup> is an individual or a body corporate or its owners are partners in it<sup>3</sup>, and unless the owner has notified the Health and Safety Executive of specified information<sup>4</sup> at least 28 days in advance of the intended commencement of the mining operation<sup>5</sup>. The owner of a mine must make such financial and other provision to secure, and must otherwise secure as far as practicable, that the mine is managed and worked in accordance with the relevant statutory provisions<sup>6</sup> applicable to the mine and is so planned and laid out as to enable that purpose to be readily secured<sup>7</sup>. He may appoint persons for the purpose of securing the fulfilment of his statutory responsibilities in relation to a mine, in which case he must forthwith send copies of the appointments to the manager of the mine concerned and to the Health and Safety Executive<sup>8</sup>.

The owner must appoint a manager of the mine<sup>9</sup>, a substitute manager<sup>10</sup> to act when the manager is temporarily not available or the post of manager is vacant, and a surveyor for the mine<sup>11</sup>, and must notify the Executive, within 28 days of the date of any such appointment, of the name, address and terms of appointment of the person appointed<sup>12</sup>.

Every owner must prepare and, as often as appropriate, revise a written statement of his general policy with respect to the health and safety at work of all persons at work at the mine and the organisation and arrangements for the time being in force for carrying out that policy, and must bring the statement and any revision of it to the notice of all persons at work at the mine<sup>13</sup>. He will attract all the duties of an employer under the Health and Safety at Work etc Act 1974 and other health and safety legislation<sup>14</sup>.

In addition, the owner of a coal mine<sup>15</sup> must ensure that the mine is not worked unless there are in force owner's operating rules, relating to ventilation of blind ends, mine fires and frictional ignition<sup>16</sup>, which are suitable for that mine, are set down in writing and have been notified to the Health and Safety Executive forthwith<sup>17</sup>. The owner must ensure that the owner's operating rules, as for the time being in force, are brought to the attention of all persons at work at the mine (whether or not employed by the owner) who may be affected by them, and, so far as practicable, that all operations at the mine are undertaken in accordance with those rules in so far as they affect the conduct of the operations concerned, and that the rules are observed by all persons at work at the mine<sup>18</sup>.

The owner<sup>19</sup> of every mine<sup>20</sup> must ensure that no work is carried out at the mine unless a document (the 'health and safety document') has been prepared, which:

- 1627 (1) demonstrates that the risks to which persons at work at the mine are exposed have been assessed<sup>21</sup>;
- 1628 (2) demonstrates that adequate measures, including measures concerning the design, use and maintenance of the mine and its equipment, have been and will continue to be taken to safeguard the health and safety of the persons at work; and
- 1629 (3) includes a statement of how the measures referred to in head (2) above will be co-ordinated<sup>22</sup>.

In addition to the matters referred to in heads (1) to (3) above, the health and safety document must where appropriate also include:

- 1630 (a) a plan detailing the equipment and measures required to protect persons at work at the mine from the risk of explosion;
- 1631 (b) where toxic gases are or may be present in the atmosphere at the mine, in such concentration that the atmosphere may be harmful to the health of persons at work, a plan detailing the protective equipment and measures required to protect persons at work at the mine from the harmful atmosphere; and
- 1632 (c) in any zone below ground where rockbursts<sup>23</sup> or gas outbursts<sup>24</sup> may occur an operating plan setting out as far as possible the susceptible zones and the measures necessary for the protection of persons at work in, approaching or traversing such zones<sup>25</sup>.

In relation to fire, the health and safety document prepared pursuant to the above provisions must:

- 1633 (i) include a fire protection plan detailing the likely sources of fire, and the precautions to be taken to protect against, to detect and combat the outbreak and spread of fire; and
- 1634 (ii) in respect of every part of the mine other than any building on the surface of that mine:

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- 39. (A) include the designation of persons to implement the plan, ensuring that the number of such persons, their training and the equipment available to them is adequate, taking into account the size of, and the specific hazards involved in, the mine concerned; and
- 40. (B) include the arrangements for any necessary contacts with external emergency services, particularly as regards rescue work and fire-fighting; and
- 41. (C) be adapted to the nature of the activities carried on at that mine, the size of the mine and take account of the persons other than employees who may be present<sup>26</sup>.

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The owner must ensure that the health and safety document is kept up to date and made available to each employer<sup>27</sup> of persons at work at the mine<sup>28</sup>. The owner must also ensure that the measures identified in the health and safety document are taken and that any plans included in that document are followed<sup>29</sup>.

The owner must co-ordinate the implementation of all measures relating to the health and safety of the persons at work at the mine<sup>30</sup>.

Every owner of a mine must ensure that the prescribed additional health and safety requirements<sup>31</sup> are complied with as appropriate having regard to the features of the mine, to the nature and circumstances of the work carried on there and to the provisions of the health and safety document<sup>32</sup>.

1 As to the meaning of 'mine' see PARA 748 note 1.

2 'Owner' means an owner within the meaning of the Mines and Quarries Act 1954 s 181 (ie the person for the time being entitled to work it; and a liquidator, receiver or manager who carries on the business of an owner is an additional owner: see PARA 395 note 5; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 521); Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1)

(definition substituted by SI 1995/2005). As to the application of, and exemption from, the 1993 regulations see PARA 748 note 1.

3 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(1). A reference in reg 6 to a mine includes a reference to a closed tip within the meaning of the Mines and Quarries (Tips) Act 1969 s 2(2)(b) (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 541) associated with the mine, and accordingly the duties of the owner extend to such a tip: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 3(3).

4 Ie specified in the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, Sch 2 Pt I: reg 7(1). Such information comprises the name, address and location of the mine; the name and address of the owner; the start of work to open a mine, seam or vein system; the start of operations to sink a new shaft or drive a new outlet; the resumption of work on a seam or vein-system or use of a shaft or outlet; and the re-opening of a mine, seam, vein-system, shaft or outlet: Sch 2 Pt I. In the case of a mine which was in existence or under construction on the date when the 1993 regulations came into force (ie 1 October 1993: reg 1), notification under the Mines and Quarries Act 1954 s 139(1) (repealed) in so far as it provided the information required by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, Sch 2, is deemed to be notification under reg 7(1): reg 7(3). As to the Health and Safety Executive see PARA 361 et seq.

5 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 7(1). Any change in the name, address and location of the mine, or in the name and address of the owner must be notified to the Executive within 28 days of the event in question, as must the abandonment of the mine or of a seam, vein-system, shaft or outlet, or a seam or vein-system ceasing to be worked or a shaft or outlet ceasing to be used: reg 7(2), Sch 2 Pt II.

6 As to the relevant statutory provisions see PARA 302 note 24.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(2). This duty applies in relation to all relevant statutory provisions whether or not they expressly impose duties on the owner or on some other person (reg 6(5)) but not in relation to specified provisions which expressly provide that a person is to be guilty of an offence (reg 6(6), Sch 1); see PARA 877.

8 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(3).

9 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(2): see PARA 748.

10 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(3): see PARA 748.

11 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 27(1): see PARA 754.

12 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 34.

13 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(4). This is without prejudice to the general duty of employers to prepare and revise such a statement under the Health and Safety at Work etc Act 1974 s 2(3) (as to which see PARA 394).

14 As to such duties see PARA 420 et seq.

15 Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, regs 1, 2.

16 Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 4, Schedule.

17 Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 3(1). Where it is reasonably required in the interests of health or safety at the mine, the Executive may, by notice in writing, require the owner to modify any of the owner's operating rules made by him (whether or not it is already in force), and in such a case the owner must modify the rule in accordance with the terms of the notice and within the time limit specified in it: reg 3(3). In any proceedings for an offence consisting of a contravention of reg 3(3), it is a defence for the owner to prove that at the time when the proceedings were commenced either (1) an improvement notice under the Health and Safety at Work etc Act 1974 s 21 (see PARA 377) had not been served on him; or (2) if such a notice had been served on him, the period for compliance with it had not expired or he had appealed against the notice and that appeal had not been withdrawn or dismissed: Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 6.

18 Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 3(2). The Mines and Quarries Act 1954 s 157 (see PARA 878) does not apply in relation to any prosecutions or other legal proceedings based on an allegation of a contravention of a requirement or prohibition imposed by or under the Coal Mines (Owner's Operating Rules) Regulations 1993 SI 1993/2331: reg 7.

19 For these purposes, 'owner' means an owner within the meaning of the Mines and Quarries 1954 s 181: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1).

20 For these purposes, 'mine' means a mine within the meaning of the Mines and Quarries 1954 (see PARA 343 note 1): Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1). Save where the contrary intention appears, the 1995 regulations apply to all mines: reg 3(1).

21 It is assessed in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.

22 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, regs 2(1), 4(1) (regs 2(1), 4(1), (2) amended, and reg 4(5) added, by SI 1999/3242).

The Mines and Quarries Act 1954 s 157 (which provides a defence in legal proceedings and prosecutions in certain circumstances: see PARA 878) does not apply in relation to any prosecutions or other legal proceedings based on an allegation of a contravention of a requirement or prohibition imposed by the 1995 regulations: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 9.

23 'Rockburst' means a sudden failure of stopes, pillars, walls or other rock buttresses adjacent to or in the mine workings: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1).

24 'Gas outburst' means a sudden release of gas with or without the projection of minerals or rocks: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1).

25 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(2) (as amended: see note 22).

26 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(5) (as added: see note 22).

27 For these purposes, 'employer' includes the owner if he employs persons at work at the mine: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1). The 1995 regulations apply to a self-employed person as they apply to an employer and as if that self-employed person were both an employer and a person at work: reg 3(2).

28 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(3) (amended by SI 1999/2463).

29 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 4(4).

30 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 5.

31 It is the additional health and safety requirements set out in the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, Sch 1 Pt II, which apply without prejudice to the requirements of the relevant statutory provisions relating to the mine: reg 6(1)(b), (2). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

The additional health and safety requirements on every owner of a mine are as follows: (1) lighting: every place above ground at a mine where a person is likely to be exposed to risks in the event of the failure of artificial lighting must be provided with emergency lighting of adequate intensity and where that is impractical persons at work in that place must be provided with a personal lamp; (2) control of explosive atmospheres above ground: where there is a risk of an unintended explosion at any place above ground at a mine, all necessary measures must be taken with a view to (a) preventing the occurrence and accumulation of explosive atmospheres; and (b) preventing the ignition of explosive atmospheres; (3) smoking and use of open flame: at every place, at a mine, where there is a particular risk of fire or explosion (a) smoking must be forbidden; and (b) no open flame must be used nor any work carried out which may give rise to an ignition hazard unless safety precautions are first taken to prevent the occurrence of any fire or explosion; (4) fire-fighting equipment: the location of fire-fighting equipment must be indicated by signs which are placed at appropriate points at the mine; (5) written instructions: written instructions must be drawn up for every mine which must set out comprehensible (a) rules and safety instructions to be observed to ensure the health and safety of persons at work and the safe use of equipment; and (b) information on the use of emergency equipment and action to be taken in the event of an emergency at or near any place of work at the mine; (6) flammable materials taken below ground: flammable materials taken below ground at a mine must be limited to the quantity which is strictly necessary: Sch 1 Pt II paras 1-6.



32 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 6(1)(b).

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### **750. Duties of manager.**

The manager<sup>1</sup> of a mine<sup>2</sup> must, so far as practicable<sup>3</sup>:

- 1635 (1) manage and control the undertaking of the mine in accordance with the relevant statutory provisions<sup>4</sup>;
- 1636 (2) ensure by the exercise of supervision and inspection the safety of persons and operations at the mine;
- 1637 (3) ensure that all persons who are appointed to perform duties under the Management and Administration of Safety and Health at Mines Regulations 1993 understand the nature and scope of their duties; and
- 1638 (4) ensure the discharge by all others, except the owner<sup>5</sup> and persons acting on his behalf, of obligations imposed on them with respect to the mine by, or by virtue of, the relevant statutory provisions<sup>6</sup>.

The manager must appoint a suitably qualified and competent person<sup>7</sup> to exercise supervision over persons for the time being at the mine when the manager is not present at the mine but is readily available while the mine is being worked, and must ensure that duties and authority are properly allocated to achieve the objectives of the management structure<sup>8</sup> so far as is practicable<sup>9</sup>.

The manager has responsibilities in relation to the installation, inspection and maintenance of plant and equipment<sup>10</sup> and must, so far as is practicable, ensure that there is a sufficient supply of materials and plant and equipment readily available to enable the relevant statutory provisions as they apply to the mine to be complied with<sup>11</sup>. He must investigate promptly and, where appropriate, remedy any complaints relating to shortage of material or of plant and equipment required to be readily available, and to any other matters relating to the health, safety and welfare of persons at work at the mine<sup>12</sup>.

The manager must make suitable arrangements for recording the names of all persons who go below ground and of those who return to the surface with a view to ensuring that persons below ground and their location can be readily identified at any time<sup>13</sup>. Where necessary to avoid danger, he must make suitable arrangements so that when persons at work at the mine are below ground the barometric pressure is measured before the start of every shift and the trend in barometric pressure is noted, and that the measurement of and trend in barometric pressure are displayed so that persons going below ground can be aware of them, and brought to the attention of all persons who exercise supervision<sup>14</sup> or undertake inspections<sup>15</sup> at the mine<sup>16</sup>.

The manager must read and countersign all reports and records relating to the mine which are required to be made by the relevant statutory provisions, or ensure that they are read and countersigned by suitably qualified and competent persons<sup>17</sup> and, if he does not read them himself, must ensure that all matters of an abnormal or unusual nature or which require action by him or by any other person within the management structure<sup>18</sup> are brought to his attention forthwith<sup>19</sup>.

The manager of a coal mine must ensure that copies of the current owner's operating rules<sup>20</sup> are kept and made available in the covered accommodation provided<sup>21</sup> at the mine<sup>22</sup>.

The manager<sup>23</sup> of every mine<sup>24</sup> must ensure so far as is reasonably practicable that only hydraulic fluids<sup>25</sup> which are both difficult to ignite and satisfy any specifications relating to fire resistance and hygiene approved<sup>26</sup> for these purposes are used at the mine<sup>27</sup>. Where it is not reasonably practicable to use hydraulic fluids which satisfy these requirements, the manager must ensure that appropriate action is taken to avoid any increased risk of fire resulting from the use of the hydraulic fluid<sup>28</sup>.

1 A 'manager' is the person appointed to be sole manager of a mine under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(1). The expression 'manager' includes a substitute manager where appointed (under reg 8(3)) and a manager appointed as sole manager for part of a mine (under reg 15(1)): regs 8(5), 15(1). See PARA 748. As to the application of, and exemption from, the regulations see PARA 748 note 1.

2 As to the meaning of 'mine' see PARA 748 note 1.

3 As to the meaning of 'practicable' see PARA 417.

4 As to the relevant statutory provisions see PARA 302 note 24.

5 As to the meaning of 'owner' see PARA 749 note 2.

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 9(3).

7 The qualifications are set out in the approved code of practice. As to codes of practice approved by the Health and Safety Executive see PARA 426.

8 Ie as set out in the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2): see PARA 748.

9 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(3).

10 See the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11; and PARA 756.

11 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(1) (a).

12 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(1) (b).

13 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(1) (c).

14 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2)(a): see PARA 748.

15 Ie under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(2): see PARA 753.

16 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(2).

17 As to suitably qualified persons see PARA 748 note 7.

18 As to the management structure see PARA 748.

19 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(1) (d).

20 Ie the rules made in pursuance of the Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331: see PARA 749 text and notes 15-18.

21 Ie the covered accommodation provided pursuant to the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36: see PARA 752.

22 Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 5. The defence provided by the Mines and Quarries Act 1954 s 157 (see PARA 878) does not apply to any offence of contravening this provision: Coal Mines (Owner's Operating Rules) Regulations 1993, SI 1993/2331, reg 7.

23 For these purposes, 'manager' means (1) the person appointed as the manager of the mine under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8 (see PARA 748); and (2) in relation to a part of a mine, the person appointed as the manager of that part under reg 15 (see PARA 748): Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1).

24 As to the meaning of 'mine' for these purposes see PARA 749 note 20.

25 'Hydraulic fluid' means a fluid used for the transmission of hydrostatic or hydrokinetic mechanical energy: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1).

26 'Approved' means approved for the time being in writing by the Health and Safety Executive and 'approve' and 'approval' are to be construed accordingly: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 2(1). As to the Health and Safety Executive see PARA 361 et seq.

27 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 8(1).

28 Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 8(2). As to contravention of these provisions see reg 9; and PARA 749 note 22.

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### **751. Duties of employers and employees.**

In addition to specific duties imposed by statute or particular regulations, general duties are imposed on employers and employees by the Management and Administration of Safety and Health at Mines Regulations 1993<sup>1</sup>. Each employer of employees at work at a mine must comply with the relevant statutory provisions<sup>2</sup> which apply to that mine in so far as those provisions do not exclusively impose a duty on a person other than the employer<sup>3</sup>.

Both employees at work at a mine and their employers (except the owner of the mine<sup>4</sup>) have a general duty to co-operate with the manager<sup>5</sup> of the mine to the extent requisite to enable the manager to comply with the requirements of the relevant statutory provisions, and must comply with any directions given by or on behalf of the manager for that purpose<sup>6</sup>.

Where the employees of more than one employer are at work at a mine, the employers concerned must co-operate with one another, by exchange of information or otherwise, to the extent requisite to enable each employer to comply with the requirements of the relevant statutory provisions at the mine in so far as their ability so to comply depends on such co-operation<sup>7</sup>.

Every employee at work at a mine must:

- 1639 (1) to the best of his ability, leave his working place at the end of his period of work in such condition as to allow work to be resumed there safely and without risks to health or, if unable to do so, must fence off the place where practicable and report the matter to the person responsible in the management structure of the mine<sup>8</sup>;
- 1640 (2) take any necessary steps which are open to him to avoid interruption of ventilation at the mine by the accumulation of minerals, vehicles or materials;
- 1641 (3) behave in an orderly manner;
- 1642 (4) not leave his place of work without taking his lamp and any self-rescuer issued to him;
- 1643 (5) not be in a state of intoxication or, without the manager's permission, bring any intoxicating liquor to the mine;
- 1644 (6) not sleep below ground or, while in charge of any plant or equipment, on the surface;
- 1645 (7) not without authority pass beyond any enclosure, barrier or danger signal or open any locked door;
- 1646 (8) not brush or waft out any flammable gas<sup>9</sup>.

An employee also has specific duties in the event of discovering danger at the mine<sup>10</sup>.

Further duties are imposed on employers (although not on employees) by the Mines Miscellaneous Health and Safety Provisions Regulations 1995. Every employer<sup>11</sup> of persons at work at a mine<sup>12</sup> must ensure that the prescribed additional health and safety requirements<sup>13</sup> are complied with as appropriate having regard to the features of the mine, to the nature and circumstances of the work carried on there and to the provisions of the health and safety document<sup>14</sup>. An employer of a person at work at a mine must also ensure that he is provided

with such health surveillance as is appropriate<sup>15</sup>; and where that person is assigned to the work after 26 October 1995<sup>16</sup>, the health surveillance must be commenced before he is so assigned<sup>17</sup>.

1     Ie the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897. As to the application of, and exemption from, those regulations see PARA 748 note 1.

2     As to the relevant statutory provisions see PARA 302 note 24.

3     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 4(1). This duty does not extend to matters which are beyond the control of the employer: reg 4(1). As to the meaning of 'employer' see PARA 748 note 4.

4     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 4(3). As to the meaning of 'owner' see PARA 749 note 2.

5     As to the meaning of 'manager' see PARA 750 note 1.

6     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, regs 4(3), 5(1).

7     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 4(2).

8     Ie in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(3): see the text to note 10; and PARA 829. As to the management structure see PARA 748.

9     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(2). As to the meaning of 'gas' see PARA 789 note 5.

10    Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(3): see PARA 829.

11    As to the meaning of 'employer' for these purposes see PARA 749 note 27.

12    As to the meaning of 'mine' for these purposes see PARA 749 note 20.

13    Ie the additional health and safety requirements set out in the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 6(1)(a), Sch 1 Pt I, which apply without prejudice to the requirements of the relevant statutory provisions relating to the mine: reg 6(1)(a), (2).

The additional health and safety requirements on an employer of persons at work at a mine are as follows: where it is shown by the health and safety document that such a measure is necessary, a system of work permits must be introduced for carrying out hazardous operations and usually straightforward operations which may interact with other activities to cause serious hazards: Sch 1 Pt I para 1(1). Work permits must specify the conditions to be fulfilled and the precautions to be taken before, during and after, the work concerned and must be issued by the employer or person at work in charge of those operations: Sch 1 Pt I para 1(2). 'Health and safety document' is to be construed in accordance with reg 4 (see PARA 749): reg 2(1).

14    Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 6(1)(a).

15    For these purposes, 'appropriate' means appropriate having regard to the nature and magnitude of the risks to the health and safety of the persons created by the relevant work: Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 7(2).

16    Ie the date when the 1995 regulations came into force: see the Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 1.

17    Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI 1995/2005, reg 7(1). As to contravention of these provisions see reg 9; and PARA 749 note 22.

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## **B. NOTICES AND INFORMATION**

### **752. Covered accommodation and notices.**

At every mine<sup>1</sup> there must be provided suitable covered accommodation to which all persons at work at the mine must have access<sup>2</sup>. In that accommodation copies must be provided of:

- 1647 (1) all the relevant statutory provisions<sup>3</sup> and all approved codes of practice<sup>4</sup> which apply to the mine;
- 1648 (2) all schemes and rules required to be made under the relevant statutory provisions which apply to the mine;
- 1649 (3) any notices under the relevant statutory provisions served by an inspector<sup>5</sup> which apply to the mine;
- 1650 (4) any consents or exemptions under the relevant statutory provisions granted by an inspector or the Health and Safety Executive<sup>6</sup> which apply to the mine; and
- 1651 (5) a sketch plan of the mine showing the main roads<sup>7</sup> and means of exit from each part of the mine to the surface and the telephone stations below ground<sup>8</sup>.

Suitable notices showing the name and address of the owner<sup>9</sup> and of the manager<sup>10</sup> of the mine and the location of the covered accommodation must be provided at a place or places where they can be readily seen and read by persons at work at the mine<sup>11</sup>. If (a) regulations under the Health and Safety at Work etc Act 1974 which affect the mine are made<sup>12</sup>; or (b) any notice relating to the mine has been served by an inspector; or (c) any consent or exemption relating to the mine has been granted by the Health and Safety Executive, a notice to that effect must be posted with the notices referred to above for a period of six months immediately following the relevant event<sup>13</sup>. The Executive may approve the form which such notices are to take<sup>14</sup>.

1 As to the meaning of 'mine' see PARA 748 note 1.

2 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36(1). As to the application of, and exemption from, those regulations see PARA 748 note 1.

3 As to the relevant statutory provisions see PARA 302 note 24.

4 As to the approved code of practice see PARA 748 note 1.

5 As to inspectors see PARA 375 note 2.

6 As to the Health and Safety Executive see PARA 361 et seq.

7 As to the meaning of 'road' see PARA 759.

8 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36(2).

9 As to the meaning of 'owner' see PARA 749 note 2.

10 As to the meaning of 'manager' see PARA 750 note 1.

11 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 37(1).

12 As to such regulations see PARA 424.

13 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 37(2).

14 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 37(3).



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### **C. INSPECTION AND PLANS**

#### **753. Arrangements for inspection.**

For the purpose of ensuring adequate inspection of the mine<sup>1</sup>, the manager must ensure that all parts of the mine below ground other than shafts<sup>2</sup> are divided into suitable districts<sup>3</sup>. The manager must ensure that a sufficient number of suitably qualified and competent persons<sup>4</sup> are appointed<sup>5</sup> and assigned to districts<sup>6</sup> to inspect those districts with a view to ensuring that they are safe to enter and work in<sup>7</sup>. In particular, such inspection must relate to the presence of firedamp<sup>8</sup>, where appropriate, and to ventilation<sup>9</sup>, support of roof and sides and general safety, and must be of such frequency as to ensure, so far as such inspection can do so, that the district is safe to enter and work in<sup>10</sup>. Duties under these provisions take precedence over other duties which a person may have<sup>11</sup>. An inspector has the duty, so far as practicable, (1) to assess the condition of the district with regard to the health and safety of persons<sup>12</sup>; (2) having regard to his knowledge, experience and authority to secure remedies, to take where necessary such immediate steps as are reasonable for a person in his position to prevent danger which has arisen or is about to arise<sup>13</sup>; and (3) to report on those matters still requiring corrective action to the person responsible in the management structure<sup>14</sup>. A person with duties under this provision must, at the end of any shift when persons are due to arrive in the district for the succeeding shift, communicate with the inspector for that shift and give him all necessary information for the health and safety of persons who will be employed in that district<sup>15</sup>.

A person who has made an inspection must prepare and sign a suitable report, which must be signed by a person exercising thorough supervision in the district, unless that person had himself undertaken the inspection<sup>16</sup>.

At the end of the shift in which an inspection has been made a copy of the report must be posted in a suitable place at the mine and kept posted for at least 24 hours, or until a subsequent report is posted, whichever is the sooner<sup>17</sup>.

1 As to the meaning of 'mine' see PARA 748 note 1.

2 This does not include shafts in the course of being sunk: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(1).

3 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(1). Each such district must be limited to such a size that it is capable of being adequately inspected: reg 12(3). Different districts may be defined in relation to different shifts or days of the week or both, having regard to the work to be carried on there for the time being: reg 12(4). The boundaries of the districts, except shafts in the course of being sunk, must be shown on a suitable plan: reg 12(1). As to the meaning of 'manager' see PARA 750 note 1.

4 As to suitably qualified and competent persons see PARAS 748 note 7, 750 note 7.

5 No person may be appointed who is or is employed by a person with whom the owner of the mine has contracted to undertake other work at the mine or another mine of his: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(10). As to the meaning of 'owner' see PARA 749 note 2.

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(2).

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(1).

8 'Firedamp' means any flammable mixture of gases, or any flammable gas, naturally occurring in a mine: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1). Where in order to avoid danger the inspection includes the detection of firedamp, any instrument used must be of an approved type or conform to an approved standard: reg 12(11). As to the meaning of 'approved' see PARA 748 note 7.

9 As to ventilation requirements generally see PARAS 789-797.

10 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(5).

11 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(6) (a); but this is expressed to be subject to reg 10(5), as to which see PARA 748 text and note 22.

12 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(7) (a).

13 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(7) (b).

14 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(7) (c). As to the management structure see PARA 748.

15 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(6) (b).

16 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(8).

17 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(9).

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#### **754. Appointment and duties of surveyors.**

A mine<sup>1</sup> may not be worked unless the owner<sup>2</sup> has appointed a suitably qualified and competent person<sup>3</sup> to be the surveyor<sup>4</sup>. It is the surveyor's duty to ensure, so far as practicable that the plans, sections and working papers of the mine<sup>5</sup>, whether prepared by him or not, are suitable, complete and accurate<sup>6</sup>. Before ceasing to be the surveyor of a mine, a surveyor must ensure that plans, sections and papers<sup>7</sup> are transferred to the owner unless they are already kept at the office of the mine or at some other place approved<sup>8</sup> by the Health and Safety Executive<sup>9</sup>, and that a written report of the condition of the plans and sections is prepared and sent to the owner<sup>10</sup>.

1 As to the meaning of 'mine' see PARA 748 note 1.

2 As to the meaning of 'owner' see PARA 749 note 2.

3 As to suitably qualified and competent persons see PARA 748 note 7.

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 27(1). However, if the post of surveyor becomes vacant, the mine may be worked without a surveyor for up to 28 days or such longer period as the Health and Safety Executive approves: reg 27(2). As to when a mine is deemed to be worked see PARA 748 note 6.

5 As to the papers required to be prepared see PARA 755.

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 28(a).

7 I.e. the papers required by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29: see PARA 755.

8 As to the meaning of 'approved' see PARA 748 note 7.

9 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 28(b) (i).

10 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 28(b) (ii).

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## 755. Plans and maps.

There must be suitable, complete and accurate plans of all the workings in a mine<sup>1</sup> and of its boundaries, and as far as practicable of any other workings (whether or not discontinued or abandoned) which may affect the safety of the mine, and accurate sections of the seams or vein-systems currently being worked in the mine and of the surrounding strata<sup>2</sup>. Such plans and sections must be:

- 1652 (1) kept at the mine office or some other place approved<sup>3</sup> by the Health and Safety Executive<sup>4</sup>;
- 1653 (2) prepared and revised at suitable intervals by the surveyor<sup>5</sup> or a suitably qualified and competent person<sup>6</sup> under his supervision<sup>7</sup>;
- 1654 (3) in such form and quantity as to enable the mine to be worked safely<sup>8</sup>;
- 1655 (4) on such scale and marked with such features as is requisite for the provision of accurate information as to the safe working of the mine and as to the position and condition of existing workings, and as far as practicable those that have been discontinued or abandoned<sup>9</sup>;
- 1656 (5) marked with the date of commencement, preparation and revision of the plan or section<sup>10</sup>;
- 1657 (6) permanently and clearly drawn or printed on suitable and durable material and maintained in good condition<sup>11</sup>.

All working papers relevant to such plans and sections must be signed and dated by the person who prepared them, and retained<sup>12</sup>. Plans and working papers must be made available to the owner<sup>13</sup> or surveyor of a neighbouring mine if they are needed to assist in the preparation of plans for that neighbouring mine<sup>14</sup>.

There must also be kept at the mine office a plan showing the ventilation system of the mine<sup>15</sup>, and a suitable geological map of the district in which the mine is situated showing the boundaries of superficial and drift deposits<sup>16</sup>.

The owner and manager of the mine must provide the surveyor with all plans, drawings and other relevant documents and information relevant for preparing the plans and sections referred to above, and so far as practicable the manager must give the surveyor access to all workings (including discontinued workings) for the purpose of such preparation or of revision<sup>17</sup>.

If a mine is abandoned, or the working of a seam or vein-system discontinued for more than 12 months, the person who was the owner at that time must send the plans, sections and working papers, or accurate copies, to the Health and Safety Executive within three months<sup>18</sup>. They must be accompanied by (a) a certificate of the surveyor or other suitably qualified and competent person, from his own knowledge, that to the best of his knowledge and belief the plan or section is accurate<sup>19</sup>; and (b) a certificate of the manager or other suitably qualified and competent person, from his own knowledge, that no further work for the purpose of getting minerals has taken place after a stated date, so as to affect the accuracy of the plan or section<sup>20</sup>. Plans and documents sent to the Executive must be retained by, or in accordance with arrangements approved by, the Executive<sup>21</sup>. If it is subsequently proposed to resume working at any mine, seam or vein-system to which the documents relate, the Executive must, on reasonable notice, send the documents to the owner of the mine<sup>22</sup>.

1 As to the meaning of 'mine' see PARA 748 note 1.

2 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(1). The Mines and Quarries Act 1954 s 19 (inaccurate drawings etc) applies to plans and sections prepared under this provision: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 33.

If, in the case of any mine, the Health and Safety Executive is satisfied, upon a representation made to it by an inspector, that a plan, section or drawing which is kept by the manager of that mine is inaccurate, incomplete, dilapidated or wholly or partly indecipherable and that, in the interests of safety, it is desirable for a new plan, section or drawing to be made, he may appoint a surveyor to make a new plan, section or drawing: Mines and Quarries Act 1954 s 19(1) (amended by SI 1974/2013). The following provisions have effect where a surveyor is so appointed to make a new plan, section or drawing in the case of a mine: (1) the owner and the manager of the mine must afford to the surveyor all necessary facilities and information for the purpose of making the new plan, section or drawing; (2) on the completion of the new plan, section or drawing, it must be sent to the manager of the mine; and (3) the cost of making the new plan, section or drawing, or such part of that cost as the Health and Safety Executive thinks fit, is to be recoverable by the Executive from the owner of the mine: Mines and Quarries Act 1954 s 19(2) (as so amended). As to the Health and Safety Executive see PARA 361 et seq.

3 As to the meaning of 'approved' see PARA 748 note 7.

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (a).

5 As to the appointment of the surveyor see PARA 754.

6 As to suitably qualified and competent persons see PARA 748 note 7.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (b).

8 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (c). As to when a mine is deemed to be worked see PARA 748 note 6.

9 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (d).

10 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (e).

11 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(2) (f).

12 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(3).

13 As to the meaning of 'owner' see PARA 749 note 2.

14 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(4).

15 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(5); and see PARA 793 text and note 6.

16 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(6).

17 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 30. As to the meaning of 'manager' see PARA 750 note 1.

18 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 31(1). The Executive may approve a longer time for this purpose: reg 31(1).

19 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 31(2) (a).

- 20 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 31(2) (b).
- 21 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 32(1).
- 22 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 32(2).

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## ***D. PLANT AND EQUIPMENT***

### **756. Installation, inspection and maintenance of plant and equipment.**

The manager<sup>1</sup> of a mine<sup>2</sup> has the duty to ensure, so far as is practicable<sup>3</sup>, that all plant and equipment<sup>4</sup> are safely installed and commissioned and systematically inspected, examined, tested and maintained<sup>5</sup> by suitably qualified and competent persons<sup>6</sup>, and, so far as is practicable, that suitable written reports are made thereof and that each such report records significant defects and the steps taken to remedy them and is signed by the person making it<sup>7</sup>. He must prepare and keep up to date a suitable written scheme for the systematic inspection, examination, testing, maintenance and, where necessary, repair of all plant and equipment<sup>8</sup>.

The manager must ensure that a sufficient number of suitably qualified and competent persons are appointed (1) in the management structure<sup>9</sup>, to direct and manage the installation and inspection, etc, of plant and equipment; (2) to supervise all such activities; (3) to undertake all such activities; and (4) to be present as substitutes for the persons referred to in head (1) above when such persons are not present at the mine and the mine is being worked<sup>10</sup>.

1 As to the meaning of 'manager' see PARA 750 note 1.

2 As to the meaning of 'mine' see PARA 748 note 1.

3 As to the meaning of 'practicable' see PARA 417.

4 'Plant and equipment' is not defined for this purpose.

5 'Maintained', with respect to plant and equipment, means maintained in an efficient state, in efficient working order and in good repair, in relation to any matter which it is reasonably foreseeable will adversely affect the health and safety of any person: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(1). As to the application of, and exemption from, the regulations see PARA 748 note 1.

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11(1). As to suitably qualified persons see PARA 748 note 7.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11(4).

8 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11(2).

9 As to the management structure see PARA 748.

10 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11(3). Every person appointed under this provision, to the extent of his responsibility and subject to any instructions given to him by a more senior person within the management structure or the scheme for systematic inspection, etc (see the text to note 8), must carry out his duties with all due diligence: reg 11(5).

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## **(ii) Safety of Ingress and Egress**

### ***A. SHAFTS, OUTLETS AND SURFACE SAFETY***

#### **757. Exits from the mine.**

Except in certain circumstances<sup>1</sup> a mine owner<sup>2</sup> must ensure that there are at least two shafts or outlets providing at least two separate exits to the surface, so separated that as far as is practicable<sup>3</sup> anything which happens to one of them will not affect the safety of the other or others<sup>4</sup>. The manager<sup>5</sup> of a mine must ensure, so far as practicable, that when a person is below ground at least two separate exits from the mine are available for use<sup>6</sup>; and must prepare a suitable scheme of the action to be taken to secure the safety of persons when, owing to an accident, dangerous occurrence or breakdown of apparatus or equipment, only one exit is available for use<sup>7</sup>. If such occurs the manager must ensure that the scheme is brought into effect<sup>8</sup>, and must at once take steps to restrict the persons below ground to those who, so far as practicable, will not be exposed to danger by reason that only one exit is available for use, and who (1) are needed to carry out work essential for securing the safety of the mine or the welfare of animals; (2) are involved in work relating to the accident, dangerous occurrence or breakdown; (3) at the time when the exit became unavailable were already working below ground<sup>9</sup>; or (4) are needed to secure the health or safety of any person<sup>10</sup>. He must also at once, and by the quickest practicable means, notify the Health and Safety Executive and the person, if any, for the time being nominated under delegated legislation to receive notice of the occurrence<sup>11</sup>, and must post a notice in the covered accommodation at the mine stating that only one exit is available for use, that the manager is satisfied that it is safe for persons to remain below ground, and the reasons why he is so satisfied<sup>12</sup>.

Where only one exit is available for use owing to maintenance work being planned, the manager must ensure that the only persons below ground are those who, so far as is practicable, will not be exposed to danger by reason of there being only one exit, and who are needed to carry out work essential for securing the safety of the mine or the welfare of animals, who are involved in the maintenance work, or who are needed to secure the health or safety of those persons<sup>13</sup>.

The manager must ensure that from each landing at a shaft or outlet used as an exit there is a road, ladderway or stairway to a landing at another shaft or outlet which is available for use as an exit<sup>14</sup>.

The Health and Safety Executive may by written certificate grant exemption from these provisions<sup>15</sup>.

Contravention of these requirements is an offence<sup>16</sup>, in respect of which certain defences generally available in respect of legal proceedings under the Mines and Quarries Act 1954 do not apply<sup>17</sup>.

1 The requirement of this regulation does not apply in respect of persons working in a shaft in the course of being sunk or an outlet in the course of being driven on an inset or in exploratory development work from the shaft or outlet where the total number of such persons at any one time does not exceed 30: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 2(2).



2 The 'owner' is the person for the time being entitled to work a mine; and 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see PARA 343 note 1): Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 1(2).

3 As to the meaning of 'practicable' see PARA 417.

4 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(1). Where the sinking of a shaft is commenced after 1 April 1989 (in the case of all mines other than existing miscellaneous mines) or 1 April 1994 (in the case of existing miscellaneous mines) the shafts must be more than 15 metres apart: reg 3(1)(c). A 'miscellaneous mine' is a mine other than a mine of coal, stratified ironstone, shale or fireclay; and an 'existing miscellaneous mine' is such a mine which was in existence or under construction on 1 April 1989: reg 1(2).

The Mines (Safety of Exit) Regulations 1988, SI 1988/1729, apply below ground to all mines (reg 2(1)). They came into force for all mines other than miscellaneous mines on the earlier date, and for existing miscellaneous mines on the latter; except that the provisions of reg 9, and the repeal (effected by reg 12(1)(b)), of the Mines and Quarries Act 1954 s 70 did not come into effect until the later date for all mines: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 1(1). Until the later date, the mine concerned continued to be governed by the provisions of the Mines and Quarries Act 1954 s 22 (now repealed).

5 'Manager' is not defined for these purposes; but see PARA 750 note 1.

6 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(2).

7 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(3). For the general obligation of the manager of a mine as to plant and equipment see PARA 756.

8 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(4)(a).

9 Provided they do not remain below ground after their normal period of work has ended: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(4)(b)(iii) proviso.

10 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(4)(b). Where an inspector (as to whom see PARA 375 note 2) is of the opinion that the circumstances are such that it is unsafe for persons permitted to work below ground in accordance with this regulation to work in a particular place, he may issue a direction in writing requiring such persons to be withdrawn from below ground, and the manager must comply with that direction: reg 3(5).

11 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(4)(c) (amended by SI 1995/3163). The relevant delegated legislation is the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5: see PARA 409.

12 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(4)(d). The covered accommodation is that provided in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36: see PARA 752.

13 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 3(6).

14 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 5. This does not apply in the circumstances set out in note 1: reg 2(2).

15 The exemption may be of any mine, part of a mine, or class of mines; may be from any requirement of the Mines (Safety of Exit) Regulations 1988, SI 1988/1729; and may be granted subject to conditions and to a limit of time. It may be revoked at any time by a certificate in writing: reg 10(1). But no such exemption may be granted unless, having regard to the conditions, if any, which it proposes to attach to the exemption and any other requirements imposed by or under any enactment which apply to the case, the Health and Safety Executive is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 10(2). As to the Health and Safety Executive see PARA 361 et seq.

16 See the Mines and Quarries Act 1954 s 152; and PARA 877.

17 As to such defences see PARA 878. The defence provided by the Mines and Quarries Act 1954 s 157 (see PARA 878 text and notes 1-9) does not apply to alleged contraventions of a requirement imposed by or under the Mines (Safety of Exit) Regulations 1988, SI 1988/1729: reg 11.

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### **758. Auxiliary apparatus and equipment.**

The owner of a mine<sup>1</sup> must ensure, so far as is reasonably practicable<sup>2</sup>, that persons are not endangered when the apparatus and equipment normally used by persons to leave the mine becomes unavailable or when there is a breakdown whilst persons are being wound, and must provide suitable and effective auxiliary apparatus and equipment to enable persons to gain exit to the surface safely<sup>3</sup>.

The manager<sup>4</sup> must make suitable rules for the use of auxiliary apparatus and equipment which include arrangements for the proper maintenance, examination and testing of the auxiliary apparatus and equipment, the appointment of sufficient competent persons to inspect and operate such apparatus and equipment, and arrangements for the adequate and effective training of such persons in the use of such apparatus and equipment<sup>5</sup>. He must ensure that the rules are brought to the notice of persons who may be affected by them and that a copy of the rules is posted in the covered accommodation at the mine<sup>6</sup>.

1 As to the meanings of 'owner' and 'mine' see PARA 757 note 2.

2 As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417.

3 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 4(1). As to the application of, exemption from, and prosecutions under these regulations see PARA 757 text and notes 4, 14-15.

4 As to the meaning of 'manager' see PARAS 750 note 1, 757 note 5.

5 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 4(2).

6 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 4(2). The covered accommodation is that provided in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36: see PARA 752.

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### **759. Construction and maintenance of roads, ladderways and stairways.**

The manager<sup>1</sup> of a mine must ensure, so far as is reasonably practicable<sup>2</sup>, that every road which persons walk along to or from their place of work<sup>3</sup> is suitably constructed and maintained<sup>4</sup> for that purpose, is safe and convenient to walk along and is not normally less than 1.7 metres in height, and is kept free from obstruction<sup>5</sup>; and that any ladderway or stairway is so constructed, installed and maintained that it can be used safely<sup>6</sup>.

1 As to the meaning of 'manager' see PARAS 750 note 1, 757 note 5.

2 As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417.

3 Such a road is elsewhere referred to as a 'travelling road'. 'Road' does not include an unwalkable outlet (ie an outlet which, owing to the gradient thereof or of any part thereof (whether alone or in combination with other circumstances), persons cannot walk up with reasonable convenience): Mines and Quarries Act 1954 s 182(1).

4 'Maintained' is not defined and must therefore be given its usual and ordinary meaning: see *Galashiels Gas Co Ltd v O'Donnell (or Millar)* [1949] AC 275, [1949] 1 All ER 319, HL, per Lord MacDermott. The words 'shall be properly maintained' have been held to import an absolute and continuing obligation to keep apparatus or equipment in a proper and efficient state, and not merely a duty of properly servicing it: see *Hamilton v National Coal Board* [1960] AC 633, [1960] 1 All ER 76, HL.

5 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 6(a). As to the application of, exemption from, and prosecutions under these regulations see PARA 757 text and notes 4, 14-15. Under the previous legislation (the Mines and Quarries Act 1954 s 3 (repealed)) there was no limitation as to what might constitute an obstruction; cf the Coal Mines Act 1911 s 47 (repealed), and *Alexander v Tredegar Iron and Coal Co Ltd* [1945] AC 286, [1945] 2 All ER 275, HL. It is submitted that the previous law will continue to be applicable. Thus, things used for working the mine may constitute an obstruction if they are not in their proper place: see *Cook v National Coal Board* [1961] 3 All ER 220, [1961] 1 WLR 1192, CA; *Walters v National Coal Board* 1961 SLT (Notes) 82, Ct of Sess; *Malone v National Coal Board* 1972 SLT (Notes) 55, Ct of Sess. There may be circumstances in which it is sufficient for a clear passage of adequate width, as distinct from the whole width of the road, to be kept clear: *Kerr v National Coal Board* 1968 SLT 49; and see *Cook v National Coal Board*; *Wilson v National Coal Board* 1966 SLT 221, Ct of Sess.

6 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 6(b).

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## **760. Ways from places of work.**

Except in certain circumstances<sup>1</sup> the manager of a mine<sup>2</sup> must ensure that every place where a person works has two different ways each of which is entirely separate from the other and leads to a different exit from the mine<sup>3</sup>. Each way leading to a shaft<sup>4</sup> or outlet must be clearly marked to indicate the shaft or outlet to which it leads<sup>5</sup>.

The manager must make and operate a suitable scheme to familiarise each person with at least two ways out of the mine from the place or places where the person works<sup>6</sup>.

1 The circumstances are those set out in PARA 757 note 1. In addition, the requirements set out in this paragraph do not apply where (1) there is either (a) a heading, or other place where not more than nine persons work (other than up to three additional persons who are engaged temporarily in inspection, investigation or the taking of measurements or samples), or (b) a heading where not more than 18 persons work and where the horizontal width of the working face does not exceed the width of the heading measured across the direction of advance; (2) it is not reasonably practicable to provide two different ways each of which is entirely separate from the other and leads to a different exit from the mine; and (3) the manager has made suitable arrangements to ensure, so far as is practicable, that persons can leave the place safely, and that their safety is not endangered by the lack of two different ways each of which is entirely separate from the other and leads to a different exit from the mine: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 7(4). Where the manager decides that more than nine, but fewer than 18 persons will work at a heading which does not have two different ways each of which is entirely separate from the other and leads to a different exit from the mine, he must (i) give the Health and Safety Executive at least seven working days' advance notice in writing of the implementation of that decision (or such shorter notice as the Executive accepts), and (ii) at the same time notify that decision to the person, if any, nominated for the purpose under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 5 (as to whom see PARA 409); (iii) make suitable rules for the safe working in and exit from the heading, which incorporate a plan and which include arrangements for inspection, examination and supervision in the heading; and (iv) send a copy of the rules with any notification made to the Health and Safety Executive or nominated person as above: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 7(5) (amended by SI 1995/3163). As to the Health and Safety Executive see PARA 361 et seq.

2 As to the meaning of 'manager' see PARAS 750 note 1, 757 note 5. As to the meaning of 'mine' see PARAS 757 note 2, 343 note 1.

3 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 7(1). As to the application of, exemption from, and prosecutions under these regulations see PARA 757 text and notes 4, 14-15.

4 A 'shaft' includes a staple-pit, raise, winze or any similar excavation whether sunk or in the course of being sunk and so much of any superstructure provided at the top of a shaft as forms an extension to the shaft is deemed to form part of the shaft which is below ground: Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 1(2).

5 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 7(2).

6 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 7(3).

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## **761. Provision of barriers and enclosures.**

The manager of a mine<sup>1</sup> must make arrangements to ensure that there is a suitable barrier or enclosure to prevent any person inadvertently entering any part of the mine which is not for the time being safe to work in or to pass through<sup>2</sup>. The person for the time being in charge of that part of the mine must ensure that any such barrier or enclosure is properly maintained<sup>3</sup> and kept in position<sup>4</sup>. No person may move or interfere with any such barrier or enclosure without the authority of the manager<sup>5</sup>.

1 As to the meaning of 'manager' see PARAS 750 note 1, 757 note 5. As to the meaning of 'mine' see PARAS 757 note 2, 343 note 1.

2 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 8(1). As to the application of, exemption from, and prosecutions under these regulations see PARA 757 text and notes 4, 14-15.

3 As to the meaning of 'maintained' see PARA 459 note 3.

4 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 8(2).

5 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 8(3).

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## **762. Intake airways.**

The manager of a mine<sup>1</sup> must ensure that, apart from those persons who are going to or leaving their place of work at the beginning or end of a shift, not more than 50 persons are employed below ground in any part of a mine unless there are two separate intake airways into that part of the mine which are connected only in such a way that, in the event of a fire, transmission of the products of combustion from one airway to the other is prevented so far as is reasonably practicable<sup>2</sup> or there is one airway which is constructed of suitable fire resistant materials and is free, so far as is reasonably practicable, from the risk of fire<sup>3</sup>.

1 As to the meaning of 'manager' see PARAS 750 note 1, 757 note 5. As to the meaning of 'mine' see PARAS 757 note 2, 343 note 1.

2 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 9(a). As to the application of, exemption from, and prosecutions under these regulations see PARA 757 text and notes 4, 14-15. As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417.

3 Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 9(b).

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### **763. Safety precautions in staple-pits, outlets and shafts.**

In all mines<sup>1</sup>, every staple-pit<sup>2</sup> and unwalkable outlet<sup>3</sup> must be made secure<sup>4</sup>, except in so far as the natural conditions of the strata render it, as to the whole or any part of it, unnecessary so to make it, and, in every case, must be kept secure<sup>5</sup>. In a prosecution<sup>6</sup> for a contravention<sup>7</sup> of these provisions it is a defence<sup>8</sup> to prove that at the material time no insecure part of the staple-pit or unwalkable outlet was in use or was the site of any operations in progress by way of drilling or extending it<sup>9</sup>.

Every staple-pit and unwalkable outlet used for ingress or egress must, unless an authorised inspector<sup>10</sup>, by notice to the manager<sup>11</sup>, exempts any part of it from this requirement, be examined at least once in every seven days by a competent person appointed for that purpose by the manager, and that person must make a written report of his examination<sup>12</sup>.

The owner<sup>13</sup> of any mine<sup>14</sup> which is being worked<sup>15</sup> must ensure, so far as is reasonably practicable<sup>16</sup>, that the sinking of the shaft is so specified, planned and designed as to be safe, and without risk of injury to persons<sup>17</sup>. The manager must ensure, so far as is reasonably practicable, that the shaft is constructed or sunk safely, and without risk of injury to persons<sup>18</sup>.

The owner must ensure that each shaft is so equipped that, so far as is reasonably practicable, it is safe to use<sup>19</sup> and must, so far as is reasonably practicable, provide suitable winding apparatus<sup>20</sup> in any shaft through which a person travels<sup>21</sup>.

The manager must ensure that each shaft is so maintained that, so far as is reasonably practicable, it is safe to use<sup>22</sup>. In order to maintain the shaft and its fixtures in a safe condition the manager must appoint<sup>23</sup> sufficient competent persons to inspect<sup>24</sup> and to examine<sup>25</sup> each shaft and its fixtures at suitable intervals of time, and to carry out such maintenance as is necessary<sup>26</sup>. The written statement summarising the responsibilities and authority of any such competent person must:

1658 (1) include details of the frequency of the inspections or examinations and of the nature of the examinations, maintenance or examinations and maintenance which that competent person is to carry out; and

1659 (2) be revised when necessary to ensure that those details are correct and up to date<sup>27</sup>.

Every such competent person must record the result of any inspection or examination he makes setting out any defects he finds<sup>28</sup>.

The manager must ensure, so far as is reasonably practicable, that when a shaft or fixtures in a shaft are used, they are used safely<sup>29</sup>. So far as is necessary to ensure safety, a person in a shaft must wear and use a suitable safety harness<sup>30</sup>. The manager must ensure that sufficient suitable safety harnesses in good condition are available and that there are sufficient suitable anchorages to ensure safety<sup>31</sup>.

The manager must ensure, so far as is reasonably practicable, that no person enters or remains in any uncovered space at the bottom of a shaft unless:

- 1660 (a) the entry is for the purpose of working there, or during shaft sinking operations; and  
 1661 (b) suitable safety precautions are taken<sup>32</sup>.

The manager must ensure that at each entrance to a shaft there is a barrier suitable to ensure safety<sup>33</sup>.

It is an offence to pass beyond any enclosure or barrier or danger signal, or to open any locked door, without authority<sup>34</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 'Staple-pit' includes winze (ie a small ventilation shaft between two levels): Mines and Quarries Act 1954 s 182(1).

3 'Unwalkable outlet' means an outlet which, owing to the gradient of the whole or a part of it (whether alone or in combination with other circumstances) persons cannot walk up with reasonable convenience: Mines and Quarries Act 1954 s 182(1).

4 'Secure' imports a physical condition of security which will ordinarily result in safety (*Brown v National Coal Board* [1962] AC 574 at 590, [1962] 1 All ER 81 at 85, HL, per Lord Radcliffe, approving a dictum of McNair J in *Gough v National Coal Board* [1959] 1 QB 189 at 200, [1958] 1 All ER 754 at 762, CA (revsd without affecting this point [1959] AC 698, [1959] 2 All ER 164, HL); and see *Edwards v National Coal Board* [1949] 1 KB 704, [1949] 1 All ER 743, CA; *Marshall v Gotham Co Ltd* [1954] AC 360, [1954] 1 All ER 937, HL; *Lochgelly Iron and Coal Co Ltd v M'Mullan* [1934] AC 1, HL) but, it seems, not necessarily from such unusual dangers as an earthquake, an atomic bomb or an explosion (*Marshall v Gotham Co Ltd* [1954] AC 360, [1954] 1 All ER 937, HL, Lord Tucker; *Jackson v National Coal Board* [1955] 1 All ER 145, [1955] 1 WLR 132; *Brown v National Coal Board* [1962] AC 574 at 590, [1962] 1 All ER 81, HL, per Lord Radcliffe; *Beiscak v National Coal Board* [1965] 1 All ER 895, [1965] 1 WLR 518; and see *Tomlinson v Beckermat Mining Co Ltd* [1964] 3 All ER 1, [1964] 1 WLR 1043, CA). The duty imposed by the Mines and Quarries Act 1954 s 30 includes securing against dangers arising in the airspace of the shaft, eg from a stone falling from the underside of a suspended scaffold: *Coll v Cementation Co Ltd and National Coal Board* 1963 SLT 105. It would seem that where the duty is to make secure, a workman injured by reason of lack of such security while he is engaged in the work of making the place secure has no cause of action as for the breach of that duty: see *Walsh v National Coal Board* [1956] 1 QB 511, [1955] 3 All ER 632, CA.

5 Mines and Quarries Act 1954 s 30(1), (2) (repealed in relation to shafts by SI 1993/302). The obligation to keep secure is separate and distinct from that to make secure: cf *John G Stein & Co Ltd v O'Hanlon* [1965] AC 890, [1965] 1 All ER 547, HL, per Lord Evershed; *Brown v National Coal Board* [1962] AC 574, [1962] 1 All ER 81, HL, per Lord Denning.

6 As to prosecutions generally see PARA 852 et seq.

7 'Contravention' includes, in relation to a provision of the Mines and Quarries Acts 1954 and 1969, contravention of an order made under those Acts or of regulations; and in relation to a direction, prohibition, restriction or requirement given or imposed by a notice served under or by virtue of those Acts by an authorised inspector, in relation to a condition attached to an exemption, consent, approval or authority granted or given under or by virtue of those Acts by the Health and Safety Executive or an authorised inspector, or in relation to a prohibition or requirement imposed by or under health and safety regulations which expressly apply to all mines, any class of mine or any particular mine, a failure to comply with the provision, direction, prohibition, requirement or condition, and 'contravene' is to be construed accordingly: Mines and Quarries Act 1954 s 182(1) (amended by SI 1974/2013 and SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a). As to the Health and Safety Executive see PARA 361 et seq.

8 For other statutory defences see PARA 878.

9 Mines and Quarries Act 1954 s 30(1) proviso, (2) (repealed in relation to shafts: see note 5).

10 As to the meaning of 'authorised inspector' see PARA 375 note 2.

11 As to the meaning of 'manager' see PARA 750 note 1.

12 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 18 (substituted by SI 1968/1037; revoked, in relation to shafts, by SI 1993/302). In mines of coal, stratified ironstone, shale or fireclay, shafts, staple-pits and unwalkable outlets in the course of being sunk or driven must (subject to an



authorised inspector's power of exemption) be inspected every 24 hours: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 18 (as so substituted and partially revoked).

13 For these purposes, 'owner' means any owner within the meaning of the Mines and Quarries Act 1954 s 181 (see PARA 395 note 5): Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1) (definition substituted by SI 1995/2005).

14 For these purposes, 'mine' means any mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1): Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1) (definition substituted by SI 1995/2005).

15 The Mines (Shafts and Winding) Regulations 1993, SI 1993/302, apply to all mines which are being worked: reg 3(1). A mine is to be treated as being worked at any time when there are persons at work below ground or plant or equipment is in operation at the mine to maintain the safety of that mine or of any other mine or the operation of driving a shaft or outlet is being undertaken at the mine: reg 2(2).

For these purposes, 'shaft' includes a staple-pit, raise, winze or any similar excavation whether sunk or in the course of being sunk and so much of any superstructure provided at the top of a shaft as forms an extension to the shaft is to be deemed to form part of the shaft which is below ground: reg 2(1). Cf the definition of 'shaft' for the purposes of the Mines and Quarries Act 1954 ('shaft' means a shaft the top of which is, or is intended to be, at the surface: see s 182(1)).

It is the duty of the manager to ensure, so far as is reasonably practicable, that any requirement or prohibition imposed upon any other person by or by virtue of the 1993 regulations is duly complied with by the person concerned: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 19. Subject to reg 20(2), the Health and Safety Executive may, by a certificate in writing, exempt any mine, or part of a mine or class of mines from any requirement or prohibition imposed by those regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 20(1). The Health and Safety Executive may not, however, grant any such exemptions, unless having regard to the circumstances of the case and in particular to (1) the conditions if any which it proposes to attach to the exemption; and (2) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 20(2).

The Mines and Quarries Act 1954 s 157 (which provides a defence in legal proceedings in certain circumstances: see PARA 878) does not apply in relation to any prosecutions or other legal proceedings based on an allegation of a contravention of a requirement or prohibition imposed by or under the 1993 regulations: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 21.

16 As to what is reasonably practicable see PARA 417.

17 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 4(1). Regulation 4 also applies to the specification, planning or design of the sinking of a shaft for the purpose of working a mine: reg 3(2).

For the purpose of reg 4(1) or (2), the owner or manager respectively must take into account risks which (at the time the shaft is specified, planned, designed or, as appropriate, constructed or sunk) it is reasonably foreseeable will arise either while the shaft is being constructed or sunk or during the time it is intended to be used: reg 4(3).

18 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 4(2).

19 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(1).

20 'Winding apparatus' means mechanically operated apparatus for lowering and raising loads through a shaft and includes a conveyance or counterweight attached to such apparatus and all ancillary apparatus: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).

21 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(2).

22 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(3).

23 'Appoint' in relation to a person means appoint in writing with a written statement summarising his responsibilities and authority, and 'appointed' is to be construed accordingly: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).

24 'Inspection' means a visual inspection by a competent person looking carefully and critically for anything which may impair the safe and efficient working of the equipment or installation, and 'inspect' and 'inspected' are to be construed accordingly: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).

- 25 'Examination' means a visual examination by a competent person carried out carefully and critically and supplemented by other means (such as measurement and where necessary non-destructive testing) in order to arrive at a reliable conclusion as to the condition and safety of the equipment or installation which if necessary should be dismantled, and 'examine' is to be construed accordingly: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).
- 26 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(4)(a).
- 27 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(4)(b).
- 28 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 5(4)(c). The manager must keep the reports and, where appropriate, records made under reg 5(4)(c) at the office of the mine for three years from the date the report or record is made: reg 18(1). Records and reports kept by virtue of reg 18(1) must be kept at the office of the mine where the winding apparatus to which they relate is: reg 18(3).
- 29 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 6.
- 30 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 7(1).
- 31 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 7(2).
- 32 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 8.
- 33 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 9.
- 34 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(2)(g).

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#### **764. Safety on the surface.**

On the surface of a mine<sup>1</sup>, all buildings and structures must be kept in safe condition<sup>2</sup>, and there must be provided and maintained<sup>3</sup> safe means of access to every place in or on a building or structure at which any person has at any time to work<sup>4</sup>. Where a person has to work at a place in or on a building or structure and is liable to fall a distance of more than 2 metres, then, unless the place affords secure foothold and, where necessary, secure handhold, means must be provided by fencing or otherwise for ensuring his safety<sup>5</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 Mines and Quarries Act 1954 s 86. The duty is absolute, save in so far as s 157 (see PARA 878) provides a defence in a case where compliance with the requirement is impracticable, and it applies to all parts of the buildings and structures on the surface of the mine. It would seem that there is no breach of this provision where a means of access which is normally safe becomes temporarily unsafe from some transient cause.

3 As to the meaning of 'maintained' see PARA 459 note 3.

4 Mines and Quarries Act 1954 s 87(1).

5 Mines and Quarries Act 1954 s 87(2) (amended by SI 1976/2063).

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## **B. WINDING AND HAULAGE APPARATUS**

### **765. Provision of winding gear in unwalkable outlets.**

Unwalkable outlets<sup>1</sup> provided as a means of ingress and egress<sup>2</sup> must be provided with apparatus for carrying persons between the surface and the entrances to the outlet in all mines of coal, stratified ironstone, shale or fireclay; and, unless exempted<sup>3</sup>, such apparatus must be provided in other mines where there is more than 45 metres between the surface entrance and the lowest or furthest entrance which affords access for persons to the outlet<sup>4</sup>. The use of the apparatus must be confined to the outlet in question, unless an authorised inspector consents to its use not being so confined<sup>5</sup>; it must be properly maintained<sup>6</sup> and, when not in use, kept constantly available<sup>7</sup> for use<sup>8</sup>.

In mines of coal, stratified ironstone, shale or fireclay at which more than 30 people are employed below ground, the apparatus provided in the unwalkable outlets must be mechanically operated winding or rope haulage apparatus<sup>9</sup> if the vertical distance between the surface entrance and the lowest entrance to outlet exceeds 45 metres<sup>10</sup>.

1 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.

2 As to the provision of outlets for the purpose of ingress and egress see PARAS 757-762.

3 An authorised inspector (as to whom see PARA 375 note 2) may by notice served on the manager exempt from this requirement an outlet provided at a mine other than of coal, stratified ironstone, shale or fireclay: Mines and Quarries Act 1954 s 28(2) proviso. As to the manager see PARA 750 note 1.

4 Mines and Quarries Act 1954 s 28(1), (2) (amended by SI 1976/2063; SI 1993/302).

5 Ie by notice served on the manager: Mines and Quarries Act 1954 s 28(1), (2).

6 As to the meaning of 'maintained' see PARA 459 note 3.

7 It seems that 'available for use' in this context means in a fit state for immediate use; it does not entitle the workman to use the apparatus whenever he pleases: *Herd v Weardale Steel, Coal and Coke Co Ltd* [1915] AC 67, HL.

8 Mines and Quarries Act 1954 s 28(3). Requirements under former legislation that there should be proper raising and lowering apparatus, and that it should be constantly available for use, imposed absolute obligations: *Watkins v Naval Colliery Co (1897) Ltd* [1912] AC 693, HL, decided under the Coal Mines Regulation Act 1887 s 16 (repealed).

9 In relation to a mine shaft or staple-pit, 'winding apparatus' means apparatus for lowering and raising loads through the shaft or staple-pit, 'gravity operated winding apparatus' means winding apparatus worked solely by the action of gravity on a part of it on which a load is carried, and 'mechanically operated winding apparatus' means winding apparatus worked by a stationary engine: Mines and Quarries Act 1954 s 182(1). 'Rope haulage apparatus' means apparatus for transporting loads in vehicles attached to ropes, 'gravity operated rope haulage apparatus' means rope haulage apparatus worked solely by the action of gravity on a vehicle or vehicles attached to a rope forming part of the apparatus, 'mechanically operated rope haulage apparatus' means rope haulage apparatus worked by a stationary engine, and 'rope' includes chain: s 182(1).

10 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 6 (amended by SI 1978/1648; revoked in relation to shafts by SI 1993/302). For shafts or outlets sunk before 12 December 1978 (ie the operative date of the amending regulations) the corresponding distance specified is 150 feet: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1969 reg 6 (as originally made). The Coal and Other Mines

(Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, apply to all mines of coal, stratified ironstone, shale or fireclay (reg 5) and were made under powers contained in, inter alia, the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: reg 7(3).

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#### **766. Construction and use of winding gear in staple-pits and unwalkable outlets.**

Winding apparatus<sup>1</sup> or rope haulage apparatus<sup>2</sup> which is used for the purpose of carrying persons through staple-pits<sup>3</sup> or unwalkable outlets<sup>4</sup> must comply with the relevant regulations<sup>5</sup>, whether the apparatus is provided in accordance with statutory requirements<sup>6</sup> or not<sup>7</sup>.

In mines of coal, stratified ironstone, shale or fireclay, where mechanically operated apparatus is used for such purpose, the engine must be firmly fixed and partitioned off from any similar engine or other machinery<sup>8</sup>; in certain circumstances, the drum shaft must be bored longitudinally<sup>9</sup>; a brake or brakes must be fitted to the drum or drum shaft<sup>10</sup>, capable of holding the drum stationary against the maximum torque applied by the engine<sup>11</sup>; an indicator, other than a mark on the rope or drum, to show the position of each cage<sup>12</sup> or carriage in the staple-pit or outlet must be provided and so placed as to be readily visible to the engineman<sup>13</sup>; and the drum or sheave must be fitted with such flanges or horns and, if the drum is conical, such other devices as will prevent the rope from slipping off<sup>14</sup>. Where the winding or rope haulage apparatus is not mechanically operated the drum or drum shaft must be fitted with a locking device or brake which will hold the drum stationary when a fully loaded cage or carriage is anywhere in the staple-pit or outlet<sup>15</sup>.

In mines of coal, stratified ironstone, shale or fireclay, subject to any exemption granted by an authorised inspector where special circumstances subsist, any mechanically operated winding or rope haulage apparatus<sup>16</sup> ordinarily used for the carriage of persons in a staple-pit or unwalkable outlet must be fitted with an automatic contrivance to prevent overwinding if the speed of winding or haulage can exceed 4 metres per second; this contrivance must control the descent so that the landing speed at the bottom does not exceed 1.5 metres per second and control movement during the ascent so that danger is prevented, and, unless it is in permanent engagement, the contrivance must be fully engaged whenever persons are carried, and an indicator must be fitted at the top of the outlet to show the banksman<sup>17</sup> that it is fully engaged<sup>18</sup>.

In mines of coal, stratified ironstone, shale or fireclay, whether the apparatus is mechanically operated or not, person-carrying cages or carriages must be closed in at the top and two sides, and provided with gates<sup>19</sup> at the ends and with a rigid bar easily reached by all the passengers<sup>20</sup>. Where vehicles are carried, catches or other contrivances must be provided to prevent them from falling out<sup>21</sup>. No spliced rope may be used for winding in a staple-pit or unwalkable outlet in which persons are raised or lowered<sup>22</sup>, and no rope may be so used for more than three and a half years in a staple-pit, or two and a half years in an unwalkable outlet, unless in a particular case an authorised inspector by notice authorises its use for a further period<sup>23</sup>. No rope may be so used unless it is of a type found to withstand a load of at least six and a half times the maximum static load which may ordinarily be suspended on it where a cage is raised or lowered<sup>24</sup>, unless an authorised inspector by notice exempts a particular rope from this requirement<sup>25</sup>.

At mines other than mines of coal, stratified ironstone, shale or fireclay, similar requirements are imposed with regard to the brakes, position indicator and drum flanges and the construction of cages or carriages for carrying persons and vehicles<sup>26</sup>.

- 1 As to the meaning of 'winding apparatus' see PARA 765 note 9.
- 2 As to the meaning of 'rope haulage apparatus' see PARA 765 note 9.
- 3 As to the meaning of 'staple-pit' see PARA 763 note 2.
- 4 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.
- 5 As to these regulations see the text and notes 6-27; and PARA 767 et seq.
- 6 As to these requirements see PARA 765.
- 7 Apparatus required to be provided under the provisions of the Mines and Quarries Act 1954 s 28 (see PARA 765), must be apparatus which complies with such requirements of regulations as the Secretary of State thinks requisite or expedient for securing the safety of persons being carried: see s 28(1), (2).
- 8 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 7 (Pts III, IV (regs 6-24) revoked in relation to shafts by SI 1993/302). An authorised inspector (defined in PARA 375 note 2) is given power to exempt an engine from these requirements: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 7 proviso. As to the application and continuance in force of these regulations see PARA 765 note 10.
- 9 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 8 (amended by SI 1978/1648; and partially revoked (see note 8)).
- 10 'Drum' and 'drum shaft' include sheave and sheave shaft, respectively, and in relation to a staple pit in the course of being sunk 'cage' includes kibble: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 9(4) (partially revoked: see note 8). As to the meaning of 'kibble' see note 12.
- 11 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 9(1) (partially revoked: see note 8). An authorised inspector may, however, by notice served on the manager exempt an engine from this requirement: reg 9(1) proviso.
- 12 'Cage' includes a kibble when the staple-pit is in the course of being sunk: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 9(4) (partially revoked: see note 8). 'Kibble' includes any form of bucket, basket or barrel in which things can be raised or lowered in a staple-pit in the course of being sunk: reg 2(1) (partially revoked: see note 8). Any reference to a staple-pit in the course of being sunk includes (unless the contrary intention appears) a reference to a staple-pit being driven upwards: reg 2(2) (partially revoked: see note 8).
- 13 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 9(2) (partially revoked: see note 8).
- 14 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 10 (partially revoked: see note 8).
- 15 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 9(3) (partially revoked: see note 8).
- 16 As to the meanings of 'mechanically operated winding apparatus' and 'mechanically operated rope haulage apparatus' see PARA 765 note 9.
- 17 As to the duties of banksmen see further PARA 771.
- 18 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 11 (amended by SI 1978/1648; partially revoked (see note 8)).
- 19 Subject to provision for exemption by an authorised inspector, the gate of a person-carrying cage in a staple-pit must be so constructed and installed that it cannot project beyond the side or end of the cage: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 12(3) (partially revoked: see note 8).
- 20 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 12(2) (partially revoked: see note 8). Except in specified circumstances, no person may be carried through a staple-pit or unwalkable outlet otherwise than in a cage or carriage which complies with these requirements: see reg 12(1) (partially revoked: see note 8).

21 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 13 (partially revoked: see note 8).

22 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 17(1) (partially revoked: see note 8). This provision does not prevent the use of an endless rope in an unwalkable outlet: reg 17(1) proviso.

23 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 17(2) (partially revoked: see note 8). As to the meaning of 'rope' see PARA 765 note 9.

24 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 17(3) (partially revoked: see note 8).

25 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 17(3) proviso (partially revoked: see note 8).

26 See the Miscellaneous Mines (General) Regulations 1956 regs 7, 8, 11, 13 (revoked in relation to shafts by SI 1993/302), which are contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1.



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### **767. Maintenance of winding gear in staple-pits and unwalkable outlets.**

At mines of coal, stratified ironstone, shale or fireclay<sup>1</sup> there must be regular examination and maintenance of winding and haulage apparatus<sup>2</sup> used for carrying persons through any staple-pit<sup>3</sup> or unwalkable outlet<sup>4</sup>; external parts must be thoroughly examined every 24 hours; the rope must be thoroughly examined at intervals of not more than 30 days; detaching hooks must be dismantled, cleaned and refitted every three months and, if their efficiency may be affected by wear of any ancillary plate or bell, the relevant dimensions must be measured every 30 days by means of calipers or gauges<sup>5</sup>.

Any automatic contrivance to prevent overwinding<sup>6</sup> must be tested every seven days by attempting to raise each cage or carriage above the top landing, and every three months by attempting to land each cage at an excessive speed<sup>7</sup>. All apparatus (including any detaching hook) provided for attaching cages, carriages or kibbles<sup>8</sup> to the rope must be thoroughly examined forthwith after overwinding has caused any detaching gear or braking appliance to operate and in any case every six months<sup>9</sup>; and, unless exempted by an authorised inspector<sup>10</sup>, such apparatus must (1) if made of steel for the time being approved by the Health and Safety Executive<sup>11</sup>, be subjected to any heat treatment specified in the notice of approval, at intervals not exceeding those so specified; or (2) in any other case, be annealed at intervals not exceeding six months<sup>12</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1. Under the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, 'mine' means every mine of coal, stratified ironstone, shale or fireclay: reg 5. As to the application and continuance in force of those regulations see PARA 765 note 10.

2 As to the meaning of 'winding apparatus' see PARA 765 note 9.

3 As to the meaning of 'staple-pit' see PARA 763 note 2.

4 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.

5 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19(1)-(3), (7), (8) (reg 19(3) amended by SI 1978/1648; Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19 revoked in relation to shafts by SI 1993/302).

6 See PARA 766.

7 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19(4) (partially revoked: see note 5).

8 As to the meanings of 'cage' and 'kibble' see PARA 766 note 12.

9 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19(5) (partially revoked: see note 5).

10 As to the meaning of 'authorised inspector' see PARA 375 note 2.

11 As to the Health and Safety Executive see PARA 361 et seq.

12 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19(6) (substituted by SI 1968/1037; partially revoked (see note 5)); and see the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 5.



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## **768. Cappings of winding and haulage ropes in staple-pits and unwalkable outlets.**

No capped rope<sup>1</sup> may be used in winding or haulage apparatus<sup>2</sup> in mines of coal, stratified ironstone, shale or fireclay unless the capping has been made within the preceding six months<sup>3</sup>; and the capping must be of a type found to withstand a load, for winding ropes and haulage ropes used for person-carrying through outlets at mines of coal, stratified ironstone, shale or fireclay, of at least seven times the maximum static load or, for other haulage ropes, of at least 60 per cent of the breaking strain of the rope<sup>4</sup>. The work of capping any rope used for winding or for person-carrying haulage must be supervised by a person appointed<sup>5</sup> by the manager<sup>6</sup>; and no recapped rope may be used for winding or person-carrying haulage unless, when it was last recapped, a length, specified in relation to the lapse of time since the preceding capping, was cut off<sup>7</sup>. No capping of white metal must be used unless it was made in a specified manner and of metal of a specified melting point<sup>8</sup>; no winding or person-carrying haulage rope may be capped by bending the wires back upon the rope to form a cone unless the capping is made in a specified manner<sup>9</sup>; and no round rope to which a capel is attached by rivets passing through the rope may be used for winding or person-carrying haulage<sup>10</sup>.

1 As to the meaning of 'rope' see PARA 765 note 9.

2 As to the meaning of 'winding apparatus' see PARA 765 note 9.

3 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 65(1) (Pt IX (regs 65-70) revoked in relation to shafts by SI 1993/302). As to the meaning of 'mine' see PARA 343 note 1.

4 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 65(2) (partially revoked: see note 3).

5 It is the duty of the manager to appoint such number of suitably qualified and competent persons as is sufficient to secure the systematic inspection, examination, testing and maintenance of all plant and equipment, and the direction, management and supervision of such activities: see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 11(1), (3); and PARA 756.

6 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 66 (partially revoked: see note 3). As to the meaning of 'manager' see PARA 750 note 1.

7 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 67(1) (amended by SI 1978/1648; partially revoked (see note 3)). A competent person appointed by the manager must open up, and examine the internal condition of the part cut off and forthwith make and sign a report in a book provided by the owner: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 67(2) (partially revoked: see note 3). As to the form and preservation of books provided by the owner and as to false entries in them see PARA 393.

8 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 68 (amended by SI 1978/1648; partially revoked (see note 3)).

9 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 69 (partially revoked: see note 3).

10 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 70 (partially revoked: see note 3).

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### **769. Operation of winding gear in staple-pits and unwalkable outlets.**

Mechanically or gravity operated winding or rope haulage apparatus<sup>1</sup> must not be operated for the carriage of persons except by a competent person appointed for the purpose by the manager<sup>2</sup>; and it is the manager's duty to appoint a sufficient number of such persons to secure compliance with this requirement<sup>3</sup> and to make and secure the efficient carrying out of arrangements by which such a person is in attendance at the mine so long as there is any person below ground who it is intended should come out through any staple-pit<sup>4</sup> or unwalkable outlet<sup>5</sup> by means of such apparatus<sup>6</sup>. An authorised inspector<sup>7</sup> may, by notice<sup>8</sup> served<sup>9</sup> on the mine manager, require him to secure that, at specified times, a person who is in attendance at the mine for operating the apparatus is not charged with the duty of operating more than one set of such apparatus<sup>10</sup>.

A person appointed under these provisions must not be employed at a mine of coal, stratified ironstone, shale or fireclay for more than eight hours in any day on which his duties include the operation of winding apparatus for carrying persons<sup>11</sup>.

No mechanically or gravity operated rope haulage apparatus at a mine may be operated on any such occasion as is described above except by, or under the constant supervision of, a competent person<sup>12</sup>.

At mines of coal, stratified ironstone, shale or fireclay, the operator of winding or rope haulage apparatus<sup>13</sup> used for person-carrying must not leave the controlling gear while the apparatus is in motion or when he has any cause to believe that anyone is in the cage, carriage or kibble<sup>14</sup>. He must examine the external parts at least once per shift, unless a mechanic has<sup>15</sup> already done so<sup>16</sup>; and after any break in winding or haulage exceeding two hours he must, before raising or lowering any person, test the cage, carriage or kibble between the top and bottom landings at least once<sup>17</sup>. If any material defect is discovered during any such examination or test, or on any other occasion, the operator must not use the machinery until the defect has been reported and he has received instructions to do so from a responsible official<sup>18</sup>. The apparatus must be kept cleaned and oiled<sup>19</sup>. The operator must not comply with any indistinct signal, or a series of signals which appears incomplete or inconsistent<sup>20</sup>; and the person in charge of such apparatus must not allow it to be operated under his supervision, when persons are not being carried, by anyone who is not so authorised in writing by the manager<sup>21</sup>.

1 As to the meaning of 'mechanically or gravity operated winding or rope haulage apparatus' see PARA 765 note 9.

2 As to the appointment of competent persons by the manager see PARA 750. As to the meaning of 'manager' see PARA 750 note 1.

3 Mines and Quarries Act 1954 s 42(1) (amended by the Employment Act 1989 ss 9(1), 29(4), Sch 7 Pt II; and by SI 2006/1031; the Mines and Quarries Act 1954 s 42 repealed in relation to shafts by SI 1993/302). As originally enacted this subsection provided for such persons to be male. Women can thus now carry out certain mining tasks from which they were previously excluded: see PARA 453.

4 As to the meaning of 'staple-pit' see PARA 763 note 2.

5 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.

6 Mines and Quarries Act 1954 s 42(2) (partially repealed: see note 3).

- 7 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 8 As to the meaning of 'notice' see PARA 774 note 18.
- 9 As to the service of notices see PARA 774.
- 10 Mines and Quarries Act 1954 s 42(3) (partially repealed: see note 3).
- 11 Mines and Quarries Act 1954 s 42(4) (amended by SI 1974/2013; partially repealed (see note 3)).
- 12 Mines and Quarries Act 1954 s 43(2) (amended by the Employment Act 1989 Sch 7 Pt II; and by SI 2006/1031). The section as originally enacted provided for such persons to be male; women can thus now carry out certain mining tasks from which they were previously excluded.
- 13 As to the meaning of 'winding apparatus' and 'rope haulage apparatus' see PARA 765 note 9.
- 14 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 20 (Pt IV (regs 20-24) revoked in relation to shafts by SI 1993/2003). As to the application and continuance in force of these regulations see PARA 765 note 10. As to the meaning of 'cage' and 'kibble' see PARA 766 note 12.
- 15 In pursuance of the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 19(2) (partially revoked): see PARA 767.
- 16 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 21(1) (partially revoked: see note 14).
- 17 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 21(2) (partially revoked: see note 14).
- 18 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 21(3) (partially revoked: see note 14).
- 19 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 22 (partially revoked: see note 14).
- 20 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 24 (partially revoked: see note 14).
- 21 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 23 (partially revoked: see note 14). As to the meaning of 'manager' see PARA 750 note 1.

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## **770. Signals in unwalkable outlets.**

Every unwalkable outlet<sup>1</sup> provided with rope haulage apparatus<sup>2</sup> must, if the distance between the highest and lowest entrances<sup>3</sup> in use exceeds 15 metres<sup>4</sup>, be provided<sup>5</sup> with effective means of transmitting audible and visible signals between each entrance and the place at which the apparatus is operated<sup>6</sup>.

In relation to any unwalkable outlet the manager of a mine of coal, stratified ironstone, shale or fireclay must determine the signal to be transmitted to require any movement therein; and may determine the signal to be transmitted to give any other indication, and in particular to indicate the place from which any signal is transmitted, and no person may, except in a case of emergency, transmit any signal which is not so determined<sup>7</sup>.

1 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.

2 As to the meaning of 'rope haulage apparatus' see PARA 765 note 9.

3 In relation to an outlet, 'entrance' includes any place at which vehicles stop for loading or unloading: Mines and Quarries Act 1954 s 45(3)(b).

4 In relation to an outlet, the distance is measured between the 'terminal surface entrance' and the 'terminal underground entrance': Mines and Quarries Act 1954 s 45(1)(b). Those expressions mean, respectively, the surface entrance or, if there is more than one, that one which is furthest from the point at which the outlet reaches the surface; and the underground entrance which is furthest from that point: s 45(3)(c).

5 The signalling apparatus must also be maintained: Mines and Quarries Act 1954 s 45(1). As to the meaning of 'maintained' see PARA 459 note 3.

6 Mines and Quarries Act 1954 s 45(1) (amended by SI 1974/2013; SI 1976/2063; and SI 1993/302).

7 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 48.

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**771. Loading of cages, carriages and kibbles for carriage through staple-pits or unwalkable outlets.**

At mines of coal, stratified ironstone, shale or fireclay, no minerals<sup>1</sup>, equipment or materials (other than things normally kept by a person in his possession) must be carried through a staple-pit or unwalkable outlet<sup>2</sup> at the same time as persons are being carried through it, whether in the same direction or not<sup>3</sup>, except that when persons are being carried in order to work in the outlet etc they may have with them any necessary equipment and materials<sup>4</sup>, and persons may accompany animals or bulky materials which cannot be transported in a cage<sup>5</sup>. The banksmen, the onsetters and other persons authorised to give signals<sup>6</sup> must ensure compliance with these provisions<sup>7</sup>. The manager<sup>8</sup> must determine the maximum number of persons to be carried in any cage, carriage or kibble<sup>9</sup>, a notice of which must be kept posted at each entrance<sup>10</sup>. It is the duty of the banksman, the onsetters and other persons authorised to give signals to ensure that the maximum number is not exceeded<sup>11</sup>, that no person enters a cage or carriage unless any automatic contrivance to prevent overwinding<sup>12</sup> is, if not a contrivance which is in permanent engagement, in engagement<sup>13</sup> and that any gates provided on cages or carriages are properly closed<sup>14</sup>. The onsetter or other person authorised to give signals must not begin, or allow anyone else to begin, to open any barrier<sup>15</sup> at an underground entrance unless a cage or carriage is in position<sup>16</sup> and the barrier must be closed before or immediately after the cage or carriage is signalled away<sup>17</sup>. At the bottom landing, the top deck of a multiple-deck cage or carriage must be loaded first<sup>18</sup>, unless a balanced platform is used or the decks are loaded simultaneously<sup>19</sup>.

At mines other than mines of coal, stratified ironstone, shale or fireclay, similar provisions are made with regard to the carriage of minerals, equipment and materials<sup>20</sup>, the determination of<sup>21</sup>, and the posting of notices specifying, the maximum number of persons to be carried in cages or carriages<sup>22</sup>; and the duty of the banksman or other person authorised to give signals to ensure that the maximum number of persons is not exceeded and that any gates are properly closed<sup>23</sup>.

1 As to the meaning of 'minerals' see PARA 343 note 1.

2 As to the meanings of 'staple-pit' and 'unwalkable outlet' see PARA 763 notes 2-3. Where an outlet etc is divided throughout by a substantial partition, each compartment is deemed to be a separate outlet etc: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 51(3) (Pt IX (regs 51-56) revoked in relation to shafts by SI 1993/302). As to the application and continuance in force of these regulations see PARA 765 note 10.

3 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 51(1) (reg 51(1) partially revoked: see note 2).

4 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 51(2)(a) (partially revoked: see note 2).

5 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 51(2)(b) (partially revoked: see note 2).

6 As to signals see PARA 770.

- 7 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 51(4) (partially revoked: see note 2).
- 8 As to the meaning of 'manager' see PARA 750 note 1.
- 9 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 52(1) (partially revoked: see note 2). As to the meanings of 'cage' and 'kibble' see PARA 766 note 12. Where a cage or carriage has more than one deck, the manager must also determine the maximum for each deck: reg 52(1) (partially revoked: see note 2).
- 10 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 52(2) (partially revoked: see note 2). As to the posting of notices see PARA 774 note 21.
- 11 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 52(3) (partially revoked: see note 2).
- 12 See PARA 766.
- 13 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 53 (partially revoked: see note 2).
- 14 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 54 (partially revoked: see note 2).
- 15 As to the provision of barriers see PARA 763.
- 16 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 55(1) (partially revoked: see note 2).
- 17 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 55(2) (partially revoked: see note 2).
- 18 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 56 (partially revoked: see note 2).
- 19 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 56 proviso (partially revoked: see note 2).
- 20 See the Miscellaneous Mines (General) Regulations 1956 reg 19 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1). Regulations 12, 18-19 are revoked in relation to shafts by SI 1993/302.
- 21 See the Miscellaneous Mines (General) Regulations 1956 reg 12(1) (partially revoked: see note 20).
- 22 See the Miscellaneous Mines (General) Regulations 1956 reg 12(2) (partially revoked: see note 20).
- 23 See the Miscellaneous Mines (General) Regulations 1956 reg 18 (partially revoked: see note 20).



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## **772. Winding apparatus in shafts.**

The owner<sup>1</sup> must ensure that winding apparatus<sup>2</sup> is suitable for the purpose for which it is used, and has effective and suitable:

- 1662 (1) brakes;
- 1663 (2) except in the case of lift apparatus<sup>3</sup>, brake locking devices and brake interlocking devices;
- 1664 (3) means of controlling power to the winding engine;
- 1665 (4) means of preventing an overwind<sup>4</sup>;
- 1666 (5) means of preventing a conveyance<sup>5</sup> or counterweight<sup>6</sup> travelling at an excessive speed;
- 1667 (6) means of safely stopping and holding a conveyance or counterweight in the event of an overwind; and
- 1668 (7) means of monitoring the movement of every conveyance in the shaft<sup>7</sup>.

When winding apparatus is installed, the owner must appoint<sup>8</sup> sufficient competent persons who must examine<sup>9</sup> all aspects of the installation of the apparatus and make a written report<sup>10</sup>. When winding apparatus is modified in a way which could affect its safe operation<sup>11</sup>, the manager must appoint sufficient competent persons who must examine all aspects of the modification of the apparatus and make a written report<sup>12</sup>. The manager must ensure that winding apparatus is not used after being installed or after being so modified unless the report made<sup>13</sup> states that the winding apparatus is safe to use<sup>14</sup>.

The owner must ensure that no person installs keps<sup>15</sup> in or in connection with any winding apparatus<sup>16</sup>; and the manager must ensure that keps are not used when winding apparatus is used for carrying persons<sup>17</sup>.

The owner must specify the type of rope intended for use in any winding apparatus and any attachment or connection intended for use with such a rope and must ensure that any such rope, attachment or connection is suitable for the use for which it is intended<sup>18</sup>. Before any winding rope is put into service in a shaft, the owner must specify in writing the maximum life expected for any winding rope in that shaft, taking into account the conditions under which the winding rope will be used<sup>19</sup>. If there is any change in the conditions under which a winding rope is used in a shaft, the owner must review the life so specified and reduce it if necessary<sup>20</sup>. The owner must ensure that the specification so made, as so amended where appropriate, is kept at the office of the mine<sup>21</sup> while any rope is in use as a winding rope in the shaft to which the specification relates and for six months thereafter<sup>22</sup>. The manager must ensure that no rope is used for winding after the expiry of the life so specified, as so reduced where appropriate, except in accordance with directions which may be given by an inspector<sup>23</sup>.

The owner must ensure that there is provided in any shaft where there is winding apparatus suitable means:

- 1669 (a) to give audible and visual signals to;
- 1670 (b) to receive audible and visual signals from;
- 1671 (c) to communicate by speech with,

any place where any such means of signalling and communication are necessary to enable the winding apparatus to be used safely<sup>24</sup>. Those means must be so placed that they are safe to use and that the winding apparatus can be operated safely<sup>25</sup> and the manager must ensure that those means are so used as to enable the winding apparatus to be used safely<sup>26</sup>.

The manager must ensure, so far as is reasonably practicable<sup>27</sup>, that winding apparatus is used safely<sup>28</sup>. He must make suitable rules to provide for the safe use of any winding apparatus and the rules must specify the manner in which and the conditions under which each set of winding apparatus is to be used<sup>29</sup>. The manager must ensure that persons are not carried by winding apparatus while it is operating automatically<sup>30</sup>. No person may control winding apparatus by radio<sup>31</sup> except with suitable equipment and in a suitable manner<sup>32</sup>.

When persons are below ground in a mine where winding apparatus is used, the manager must ensure that sufficient competent persons (including winding enginemen<sup>33</sup>) appointed by him are available at the mine to ensure the safe operation of the winding apparatus and must give each such competent person suitable written instructions as to his duties<sup>34</sup>. The manager must specify in writing the maximum hours of work of winding enginemen and these must be posted in the winding engine room<sup>35</sup>. Each winding engineman must record the hours he works<sup>36</sup>.

So far as is necessary to ensure compliance with the above provisions, the manager must ensure that winding apparatus is regularly and adequately examined, inspected<sup>37</sup>, tested and maintained in accordance with a suitable written scheme<sup>38</sup>. The manager must appoint sufficient competent persons to regularly and adequately examine, inspect, test and maintain the winding apparatus and each person so appointed must write a report of the examinations, inspections, tests or maintenance which he carries out setting out any defects he finds<sup>39</sup>.

The manager must keep the reports and, where appropriate, records made under the above provisions at the office of the mine for three years from the date the report or record is made<sup>40</sup>.

It is the duty of the manager to ensure, so far as is reasonably practicable, that any requirement or prohibition imposed upon any other person by or by virtue of the above provisions is duly complied with by the person concerned<sup>41</sup>.

1 As to the meaning of 'owner' for these purposes see PARA 763 note 13.

2 As to the meaning of 'winding apparatus' see PARA 763 note 20.

3 For these purposes, 'lift apparatus' means an electrically powered lift and includes equipment used in relation to the lift in the shaft and at shaft entrances: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1). As to the meaning of 'shaft' see PARA 763 note 15.

4 'Overwind' means unintentional overtravel of a conveyance or counterweight beyond the limits set by a device installed for the purpose of preventing such overtravel: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1). As to the meanings of 'conveyance' and 'counterweight' see notes 5-6.

5 'Conveyance' means any carriage, cage, skip or kibble in which persons, mineral or materials are wound through a shaft: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).

6 'Counterweight' means a frame containing weights connected into a single conveyance winding system to reduce the out-of-balance static loads within the system: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).

7 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 10. As to the application of the 1993 regulations see PARA 763 note 15.

8 As to the meaning of 'appoint' see PARA 763 note 23.

9 As to the meaning of 'examine' see PARA 763 note 25.

10 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 11(1). The owner must ensure that any report so made is given to the manager: reg 18(2). As to the manager see PARA 750.

- 11 For these purposes, any modification made to winding apparatus with a view to rectifying a defect mentioned in a report made under the Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 11(1) or (2) is to be treated as a modification which could affect the safe operation of the winding apparatus: reg 11(3).
- 12 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 11(2).
- 13 In the report made under the Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 11(1) or, as the case may be, reg 11(2) (and construed in each case together with any further report made by virtue of reg 11(3) (see note 11): reg 11(4).
- 14 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 11(4).
- 15 'Keps' means retractable supports in a shaft on which a conveyance may rest but does not include the doors at the top of the shaft sinking: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).
- 16 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 12(1).
- 17 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 12(2).
- 18 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(1).
- 19 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(2).
- 20 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(3).
- 21 As to the meaning of 'mine' for these purposes see PARA 763 note 14.
- 22 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(4).
- 23 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(5). The inspector referred to in the text is an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see PARA 375): see the Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 13(5).
- 24 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 14(1).
- 25 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 14(2).
- 26 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 14(3).
- 27 As to what is reasonably practicable see PARA 417.
- 28 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 15(1).
- 29 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 15(2).
- 30 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 15(3).
- 31 For these purposes, 'radio' includes any transmission of electromagnetic radiation: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 15(5).
- 32 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 15(4).
- 33 'Winding engineman' means a person competent to operate the winding apparatus during manual winding: Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 2(1).
- 34 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 16(1).
- 35 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 16(2).
- 36 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 16(3).
- 37 As to the meaning of 'inspection' see PARA 763 note 24.
- 38 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 17(1).
- 39 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 17(2), (3).

40 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 18(1). Records and reports kept by virtue of reg 18(1) must be kept at the office of the mine where the winding apparatus to which they relate is: reg 18(3).

41 Mines (Shafts and Winding) Regulations 1993, SI 1993/302, reg 19. As to offences see reg 21, cited in PARA 763 note 15.

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### **(iii) Roads and Working Places**

#### **A. ROADS AND TRANSPORT**

##### **773. Roads for vehicles and conveyors.**

The manager<sup>1</sup> of a mine<sup>2</sup> must not permit vehicles to run in any road<sup>3</sup> where the vehicle, its load, any haulage rope<sup>4</sup> to which it is attached, or any animal by which it is hauled, or the harness of such animal, rubs against the roof or sides of the road, anything supporting the roof or sides or anything in the road not provided for controlling the vehicle or haulage ropes to which it is attached<sup>5</sup>. Nor must he permit a conveyor to be operated in any road where the conveyor or its load rubs against the roof or sides, anything supporting the roof or sides or anything in the road<sup>6</sup>.

In a prosecution<sup>7</sup> for a contravention<sup>8</sup> of these provisions it is a defence<sup>9</sup> to prove either that the sole purpose for which the vehicle or conveyor was being used was to facilitate such repairs to the road as would obviate any such rubbing<sup>10</sup>, or that the rubbing was due to a sudden decrease in the road's height or width which it was impracticable<sup>11</sup> to prevent<sup>12</sup>, and there was no reasonable ground for apprehending that the use of the vehicle or conveyor on that occasion would result in bodily injury to persons or animals using the road<sup>13</sup>, and there was no avoidable delay in completing the necessary repairs<sup>14</sup>.

1 As to the meaning of 'manager' see PARA 750 note 1.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 As to the meaning of 'road', and for the requirements as to the construction and minimum height of a road, see PARA 759.

4 As to the meaning of 'rope' see PARA 765 note 9.

5 Mines and Quarries Act 1954 s 36(1)(a).

6 Mines and Quarries Act 1954 s 36(1)(b).

7 As to prosecutions generally see PARA 852 et seq. These provisions provide no defence to a civil claim for damages.

8 As to the meaning of 'contravention' see PARA 763 note 7.

9 For other defences available see PARA 878.

10 Mines and Quarries Act 1954 s 36(2)(a).

11 As to what is practicable see PARA 417.

12 Mines and Quarries Act 1954 s 36(2)(b)(i).

13 Mines and Quarries Act 1954 s 36(2)(b)(ii).

14 Mines and Quarries Act 1954 s 36(2)(b)(iii).



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#### **774. Transport rules.**

The manager of every mine<sup>1</sup> has power to make rules known as 'transport rules'<sup>2</sup> with respect to the use of vehicles and conveyors and for securing the safe operation of vehicles and conveyors and the avoidance of bodily injury<sup>3</sup> being caused to persons by reason of the running of the vehicles and conveyors, and, in particular, for (1) specifying a standard height and width of road<sup>4</sup> in which they are to operate<sup>5</sup>; (2) specifying the maximum loads of vehicles and the maximum number of loaded and of unloaded vehicles which may be coupled together<sup>6</sup>; (3) specifying maximum speeds<sup>7</sup>; and (4) prohibiting the carriage of persons in vehicles or on conveyors otherwise than in such circumstances and subject to such conditions and the observance of such safety precautions as may be specified<sup>8</sup>. The manager must exercise this power for the purpose of head (1) above, and also, unless the circumstances of the mine would make it pointless to do so, for the purposes of heads (2) to (4) above; and regulations may require the power to be exercised for any other purpose for which it may be exercised<sup>9</sup>.

In exercising his power to specify a standard height and width of roads, the manager may except any specified places<sup>10</sup>, and the transport rules generally may impose duties or prohibitions upon persons employed and may make different provision with regard to different roads, classes of roads or lengths of roads, and to different classes of vehicles, conveyors and loads<sup>11</sup>.

In framing the transport rules the manager must ensure that the specified width of any length of road is sufficient to secure the safety of persons who work in or pass through it while vehicles or conveyors are in operation<sup>12</sup>, and that the maximum loads, number of vehicles to be coupled together and speeds are such as he considers provide a reasonable margin of safety<sup>13</sup>. Transport rules which are inconsistent with any regulation are, to that extent, of no effect<sup>14</sup>.

It is the manager's duty to take the appropriate steps to ensure that the roads at all times comply with the transport rules as to height and width<sup>15</sup>, and he must secure that all other provisions of those rules are executed and enforced<sup>16</sup>. Where an authorised inspector<sup>17</sup> is of the opinion that further or different transport rules should be made, he may serve on the manager a notice<sup>18</sup> to that effect, specifying a time-limit for compliance<sup>19</sup>. The manager may require a reference upon such a notice<sup>20</sup>.

A copy of the transport rules in force must be kept at the mine office or other place approved by an inspector, and notices summarising such rules as affect any person must be kept posted at suitable places in such characters and in such positions as to be easily seen and read by him<sup>21</sup>. A document certified by the manager to be a true copy of the transport rules in force is receivable in evidence and, unless the contrary is proved, deemed to be such a copy<sup>22</sup>.

1 As to the meaning of 'manager' see PARA 750 note 1. As to the meaning of 'mine' see PARA 343 note 1.

2 Mines and Quarries Act 1954 ss 37(1), 182(1). No general regulations were made for these purposes, and it would seem that any such provision would now be made by health and safety regulations: see PARA 424.

3 See also PARA 773 note 13.

4 As to the meaning of 'road' see PARA 759.

5 Mines and Quarries Act 1954 s 37(1)(a).

- 6 Mines and Quarries Act 1954 s 37(1)(b).
- 7 Mines and Quarries Act 1954 s 37(1)(c).
- 8 Mines and Quarries Act 1954 s 37(1)(d).
- 9 Mines and Quarries Act 1954 s 37(2).
- 10 See Mines and Quarries Act 1954 s 37(3).
- 11 Mines and Quarries Act 1954 s 37(4).
- 12 Mines and Quarries Act 1954 s 37(5)(a). For further provision for the safety of persons in such roads see PARA 775 et seq.
- 13 Mines and Quarries Act 1954 s 37(5)(b).
- 14 Mines and Quarries Act 1954 s 37(7).
- 15 See the Mines and Quarries Act 1954 s 37(6)(a).
- 16 Mines and Quarries Act 1954 s 37(6)(b). Rules must be enforced by a proper effective system of enforcement: *Storey v National Coal Board* [1983] 1 All ER 375, [1983] ICR 156 (deputies and other officials rode on conveyor belts in defiance of a prohibition, despite a system of deduction from pay for those found guilty of doing so; and such fines were imposed only infrequently and in very small sums: this rendered the system of enforcement 'toothless', and ineffectual to prevent man-riding on conveyor belts: and accordingly the defendants were in breach of this regulation).
- 17 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 18 'Notice' means a notice in writing: Mines and Quarries Act 1954 s 182(1); Mines and Quarries (Tips) Act 1969 s 1(3)(a). As to service of a notice see PARAS 388-389.
- 19 Mines and Quarries Act 1954 s 37(8).
- 20 Mines and Quarries Act 1954 s 37(8). In general it is an offence to not comply with any notice served by an authorised inspector (as to whom see PARA 375 note 2) but in relation to any notice served under any provision of the Mines and Quarries Act 1954 and 1969, or regulations made under them, on the owner or manager of a mine which is expressly declared to be a notice to which the provisions of the Mines and Quarries Act 1954 s 170 apply, the person upon whom the notice is served may by counter-notice served on the inspector demand a reference upon the notice: s 170(1), (2) (s 170(1) amended by SI 1999/2024). Except as otherwise expressly provided, the inspector's notice does not become operative until the time for serving a counter-notice has expired or, if a reference is demanded, until the notice is confirmed by the referee or referees: Mines and Quarries Act 1954 s 170(6). Where a counter-notice is served, the inspector's notice stands referred to a referee or referees selected by the nominated selector, who is a person nominated for the purpose by the Secretary of State (as to whom see PARA 360) after consultation with the Lord Chancellor, the Lord Chief Justice and the Lord President of the Court of Session: s 170(2), (9) (s 170(9) amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 44(1), (2)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4) (see **COURTS**)) to exercise his functions under the Mines and Quarries Act 1954 s 170(9): s 170(10) (added by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 44(3)). These provisions are applied by the Mines and Quarries (Tips) Act 1969 s 1(3)(a).
- 21 Mines and Quarries Act 1954 s 37(9). A copy of the rules must also be kept in covered accommodation provided for the purpose at or near the mine, to which all employees are entitled to have access for the purpose of inspecting those documents required to be provided in it: see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36(2)(b); and PARA 752.
- 22 Mines and Quarries Act 1954 s 37(10).



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### **775. Travelling discipline below ground.**

At mines of coal, stratified ironstone, shale or fireclay, any train run for the carriage of persons below ground must be in charge of a competent person appointed<sup>1</sup> by the manager<sup>2</sup>, and no one may get on or off a train while it is in motion or ride upon the footboard, buffer or coupling of a vehicle<sup>3</sup>; and riding upon a haulage rope<sup>4</sup> or riding upon a train of vehicles moved by mechanically operated or gravity operated rope haulage apparatus<sup>5</sup> for the purpose of detaching vehicles from, or attaching them to, the rope, if the train is moving at more than 1.4 metres per second, is prohibited<sup>6</sup>. No person employed in such a mine may travel below ground to and from his work by any other road than those notified by the manager<sup>7</sup>.

1 As to the appointment of such persons see PARA 750.

2 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 60(1). As to the application and continuance in force of these regulations see PARA 765 note 10. As to the meaning of 'manager' see PARA 750 note 1.

3 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 60(2).

4 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 62. As to the meaning of 'rope' see PARA 765 note 9.

5 As to the meaning of 'rope haulage apparatus' see PARA 765 note 9.

6 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 61 (amended by SI 1978/1648).

7 See the Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 4(1) (contained in the Coal and Other Mines (General Duties and Conduct) Order 1956, SI 1956/1761, Sch 1).

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## **776. Walking in transport roads.**

Except as provided by regulations<sup>1</sup> no person, other than an authorised person<sup>2</sup>, may walk along any part of a road<sup>3</sup> in which run vehicles moved otherwise than by hand or animal traction, unless those vehicles are specially stopped for the purpose<sup>4</sup>; and if such a road is used as a travelling road<sup>5</sup> it is the duty of the manager<sup>6</sup> to fix a travelling time during which no person may cause or permit a vehicle to move, otherwise than by hand or animal traction<sup>7</sup>. An authorised inspector<sup>8</sup> may, however, exempt<sup>9</sup> from either or both of the foregoing provisions any such road in a particular mine<sup>10</sup>.

In any prosecution<sup>11</sup> in respect of a person's walking along a road in contravention<sup>12</sup> of the foregoing restriction on walking in roads<sup>13</sup>, it is a defence to prove that he had reasonable cause to believe that repairs might be necessary in that length of road and that he was there for the purpose of verifying this belief and ascertaining the nature and extent of the repairs<sup>14</sup>.

Except with the manager's written permission, no person may accompany on foot a vehicle attached to rope haulage apparatus<sup>15</sup> otherwise than in accordance with such conditions, if any, as are specified in the transport rules<sup>16</sup>.

Notwithstanding the foregoing restriction on walking in roads<sup>17</sup>, persons may walk a length of road while vehicles are in motion under certain conditions: namely, at mines other than mines of coal, stratified ironstone, shale or fireclay, if there is a continuous<sup>18</sup> clear space of at least 600 mm in width between the vehicles and one side of the road or if the maximum speed of the vehicles does not exceed 2.7 metres per second<sup>19</sup>; and, at mines of coal, stratified ironstone, shale or fireclay, if there is such a continuous clear space of at least 600 mm in width and the maximum speed does not exceed 4.5 metres per second; or, in the case of a mine opened before 1 July 1912<sup>20</sup>, if the maximum speed does not exceed 1.4 metres per second; if the gradient nowhere exceeds 1:9 and does not exceed 1:12 for any distance of more than 90 metres, and if the average gradient of the whole length does not exceed 1:12, and, where there are two lines, if the space between them is kept free of obstructions<sup>21</sup>.

1 See the text and notes 17-21.

2 For these purposes, 'authorised person' means an official of the mine, a person employed in connection with the running of vehicles in the length of road in question, a person carrying out urgent repairs there, or a person engaged in a workmen's inspection (see PARA 383): Mines and Quarries Act 1954 s 39(3).

3 As to the meaning of 'road' see PARA 759.

4 Mines and Quarries Act 1954 s 39(1)(a).

5 As to the meaning of 'travelling road' see PARA 759 text to note 3.

6 As to the meaning of 'manager' see PARA 750 note 1.

7 Mines and Quarries Act 1954 s 39(1)(b).

8 As to the meaning of 'authorised inspector' see PARA 375 note 2.

9 As to an inspector's powers see generally PARA 376.

10 Mines and Quarries Act 1954 s 39(1) proviso (i) (amended by SI 1974/2013).

- 11 See PARA 877.
- 12 As to the meaning of 'contravention' see PARA 763 note 7.
- 13 Ie the Mines and Quarries Act 1954 s 39(1)(a).
- 14 Mines and Quarries Act 1954 s 39(1) proviso (ii).
- 15 As to the meaning of 'rope haulage apparatus' see PARA 765 note 9.
- 16 Mines and Quarries Act 1954 s 39(2). As to transport rules see PARA 774.
- 17 Ie the Mines and Quarries Act 1954 s 39(1)(a).
- 18 See *HawkrIDGE v Howden Clough Collieries Co Ltd* (1923) 92 LJB 642, CA, where it was held that the corresponding requirement of the Coal Mines Act 1911 s 43(1)(a) (repealed) applied to the whole length of the road.
- 19 Miscellaneous Mines (General) Regulations 1956 reg 23 (amended by SI 1983/994) (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).
- 20 Ie the date on which the Coal Mines Act 1911 (repealed) came into force.
- 21 Coal and Other Mines (Shafts, Outlets and Roads) Regulation 1960, SI 1960/69, regs 5, 57 (reg 57 amended by SI 1978/1648). As to the application and continuance in force of the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, see PARA 765 note 10.

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### **777. Safety in transport roads.**

At mines of coal, stratified ironstone, shale or fireclay, at every place at which sets or trains of three or more vehicles are coupled or uncoupled there must be provided and maintained<sup>1</sup> a continuous clear space at least 600 mm in width between the vehicles standing on any rails and the side of the road<sup>2</sup> nearest to those rails or, where there are two parallel lines of rails, a clear space of at least 900 mm between the vehicles standing on those lines<sup>3</sup>.

At all mines<sup>4</sup>, the manager<sup>5</sup> must not permit vehicles (other than those moved by hand) to run in any road unless refuge holes in conformity with regulations<sup>6</sup> are provided in them<sup>7</sup>. Any part of a road serving, and within 23 metres of, a working face<sup>8</sup> is excepted from this provision, and further exceptions<sup>9</sup> may be made by regulations<sup>10</sup>.

Refuge holes must be kept free from obstruction<sup>11</sup>. The prescribed dimensions are: (1) in the case of mines of coal, stratified ironstone, shale or fireclay, width, 1 metre, as nearly as may be; depth, not less than 1.2 metres; height, not less than the height of the road or 1.8 metres, whichever is the less<sup>12</sup>; and (2) in the case of other mines, width, 1 metre, as nearly as may be; depth, not less than 1 metre; height, not less than the height of the road or 1.8 metres, whichever is the less<sup>13</sup>. Where there is a continuous clear space of 600 mm or more between vehicles and one side of the road, all the refuge holes must be on that side of the road<sup>14</sup>, but where there is no such clear space any refuge holes on a curve must be on the outside of the curve and, so far as consistent with this, all must be on the same side of the road<sup>15</sup>.

At mines of coal, stratified ironstone, shale or fireclay, the maximum permitted intervals between refuge holes are, if vehicles are moved mechanically (otherwise than by locomotives) or by gravity, 20 metres where the gradient is not greater than 1:20 and there is a clear space of at least 600 mm between the vehicles and the side of the road and the speed of vehicles is confined to 1.4 metres per second, and 10 metres in any other case; and, if vehicles are moved only by animals, 23 metres<sup>16</sup>. In roads where locomotives<sup>17</sup> run, the maximum permitted intervals are:

1672 (a) where the road is level but curves:

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- 42. (i) if the radius<sup>18</sup> of the curve does not exceed 30 metres, 20 metres;
- 43. (ii) where the radius exceeds 30 metres but not 60 metres, 28 metres;
- 44. (iii) where the radius exceeds 60 metres but not 90 metres, 45 metres;

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1673 (b) where the road is straight but on a gradient:

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- 45. (i) where the gradient does not exceed 1:80, 90 metres;
- 46. (ii) where the gradient exceeds 1:80 but not 1:50, 55 metres;
- 47. (iii) where the gradient exceeds 1:50 but not 1:30, 37 metres;
- 48. (iv) where the gradient exceeds 1:30, 20 metres;

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1674 (c) where there is both a curve and a gradient, the intervals set out in head (a) or head (b) above according to the curve and gradient respectively, whichever are the lesser;

1675 (d) in any part of the road not falling under heads (a) to (c) above, 90 metres<sup>19</sup>.

Refuge holes must also be provided at each end of curves on which locomotives run<sup>20</sup>. At such mines all refuge holes must be distinctively numbered, kept whitewashed, if necessary to render them readily visible, and kept clean<sup>21</sup>.

At other mines, the maximum permitted intervals are: 90 metres where the gradient is not greater than 1:20 and the speed of vehicles is confined to 1.8 metres per second, and 20 metres in any other case<sup>22</sup>.

1 As to the meaning of 'maintained' see PARA 459 note 3.

2 As to the meaning of 'road' see PARA 759 note 3.

3 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 58 (reg 58 amended by SI 1978/1648). As to the application and continuance in force of the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, see PARA 765 note 10.

4 As to the meaning of 'mine' see PARA 343 note 1.

5 As to the meaning of 'road' see PARA 759.

6 ie conforming to the prescribed dimensions, positions, intervals between them and other requirements: Mines and Quarries Act 1954 s 40(1).

7 Mines and Quarries Act 1954 s 40(1).

8 'Working face' does not here include a place in a road at which ripping or repair work is being done: Mines and Quarries Act 1954 s 40(3).

9 Lengths of road in a mine other than a mine of coal, stratified ironstone, shale or fireclay in which the aggregate weight of mineral carried in any hour does not exceed 10 tonnes or in which there is a continuous clear space of at least 600 mm between the vehicles and one side of the road, are exempted: Miscellaneous Mines (General) Regulations 1956 reg 24(5) (reg 24 amended by SI 1983/994) (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

10 Mines and Quarries Act 1954 s 40(1) (amended by SI 1976/2063).

11 Mines and Quarries Act 1954 s 40(2).

12 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(5) (reg 59 amended by SI 1978/1648). For refuge holes made on or before 12 December 1978 (ie the operative date of the amending regulations), the width prescribed is 3 feet: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(5) (as originally made).

13 Miscellaneous Mines (General) Regulations 1956 reg 24(2) (as amended: see note 9).

14 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(6) (as amended: see note 12); Miscellaneous Mines (General) Regulations 1956 reg 24(3) (as amended: see note 9).

15 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(7); Miscellaneous Mines (General) Regulations 1956 reg 24(4).

16 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(1), (4) (as amended: see note 12).

17 As to the meaning of 'locomotive' see PARA 782 note 3. That definition is applied by the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 2(1).

18 The radius is measured to the centre of the road: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(2)(a).

19 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(2) (as amended: see note 12). For parts of roads made on or before 12 December 1978 (ie the operative date of the amending regulations), certain measurements in imperial units have effect. These are: maximum radius of curve in head (a)(i) in the text, 100 feet; minimum radius in head (a)(ii), 100 feet; maximum radius in head (a)(ii), 200 feet;

minimum radius in head (a)(iii), 200 feet; maximum radius in head (a)(iii), 300 feet; maximum intervals in head (a)(iii), 150 feet; maximum intervals in head (b)(i), 300 feet; maximum intervals in head (d), 300 feet: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(2) (as originally made).

20 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(3).

21 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(8) (as amended: see note 12).

22 Miscellaneous Mines (General) Regulations 1956 reg 24(1) (as amended: see note 9).

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### **778. Clearances in transport roads in coal mines.**

For mines of coal, regulations<sup>1</sup> prescribe clearances for underground roads<sup>2</sup> in which vehicles run on rails or conveyors are operated<sup>3</sup>. For this purpose 'clearance' means a continuous<sup>4</sup> clear space<sup>5</sup> between (1) any side of the road, or anything supporting that side, and any vehicle or conveyor; (2) vehicles on adjacent tracks; (3) adjacent conveyors; and (4) any conveyor and any vehicle on an adjacent track<sup>6</sup>. The regulations provide separately for new roads and old roads. Roads<sup>7</sup> made or enlarged after 30 April 1960 for specified transport uses<sup>8</sup> are referred to as 'new roads'<sup>9</sup>; all other roads are referred to as 'old roads'<sup>10</sup>.

In new roads in which any vehicle is running or any conveyor is in operation, and at working places<sup>11</sup> and boarding points<sup>12</sup> in new roads, the manager<sup>13</sup> must ensure the provision and maintenance<sup>14</sup> of clearances of prescribed widths<sup>15</sup>. The prescribed clearances are not, however, required, except at working places and boarding points, in a new road, other than one in which persons are carried in vehicles with open sides<sup>16</sup>, if the manager makes and enforces arrangements to secure that no person is in the road when any vehicle is in motion unless he is (a) there to accompany a vehicle or set of vehicles<sup>17</sup>; or (b) at a working place on the road<sup>18</sup>.

In old roads, the provisions as to clearances at working places and boarding points apply as they do in new roads<sup>19</sup>.

The manager must ensure that notices are kept posted<sup>20</sup> at each end of every old or new road which is used by persons on foot<sup>21</sup>, and at such other place in them as may be necessary to avoid danger, stating the position in the road of any clearance provided under these provisions<sup>22</sup> and indicating any point at which the position of the clearance changes<sup>23</sup>. These provisions as to clearances do not apply where there has occurred a sudden decrease, however caused, or a gradual decrease caused by workings in a different plane, of a clearance provided in accordance with their requirements<sup>24</sup>. If an authorised inspector<sup>25</sup> is satisfied that the application of any such provision is not requisite for safety or is inappropriate in relation to any mine or part of a mine, he may by notice served<sup>26</sup> on the manager exempt that mine or a part from the application of that provision<sup>27</sup>.

1    Ie the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217. These regulations were made under powers contained in, inter alia, the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

2    As to the meaning of 'road' see PARA 759.

3    Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 3.

4    See PARA 776 note 18.

5    Ie taking into account the swing of any vehicle.

6    Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 2(1), 5(1).

7    Ie underground roads on which vehicles run on rails or conveyors are operated: see the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 2(1), 3, 4.

8 The uses set out in the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, Schedule Pts I, II: reg 4. These uses include (1) for roads in which persons are carried in vehicles with open sides (see note 16), the carriage of persons in vehicles moved otherwise than by hand (Schedule Pt I); and (2) for other roads, the use of mechanically or gravity operated rope haulage apparatus (defined in PARA 765 note 9), locomotives (defined in PARA 782 note 3), vehicles moved by hand or animal traction, or conveyors (Schedule Pt II).

9 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 2(1), 4. A road appropriated to a specified transport use before 30 April 1960 is not a new road, even if enlarged after that date: reg 4(b).

10 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 2(1), 7.

11 In relation to a road, 'working place' means any place on that road at which any person is normally employed in, or in connection with, the loading, unloading, handling or operation of any vehicle otherwise than for the purpose of or in connection with the execution of works to any part of the road at or adjacent to that place: Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 2(1).

12 In relation to a road, 'boarding point' means any place on that road at which any person normally boards or alights from a vehicle: Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 2(1).

13 As to the meaning of 'manager' see PARA 750 note 1.

14 As to the meanings of 'maintenance' and 'maintained' see PARA 459 note 3.

15 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 4, 5(1), 6(1), Schedule (reg 6(1), Schedule amended by SI 1976/2063). These provisions apply, in the case of new roads in which persons are not carried in vehicles with open sides, notwithstanding anything in the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 59(6) (see PARA 777): Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 2(3), 5(1)(ii). Clearances are specified according to (1) whether persons are carried on vehicles with open sides (see note 16); (2) whether the road or other place concerned is in unsettled ground; and (3) the type of transport used: regs 5(1), 6(1), Schedule (as so amended). For this purpose 'unsettled ground' means ground within 275 metres, measured in the plane of the working, of a working face other than a place at which the work consists only of ripping or repairing: reg 2(1) (amended by SI 1976/2063). Provisions as to clearances in the Coal and Other Mines (Locomotives) Regulations 1956 regs 6(3), 7(3) (contained in the Coal and Other Mines (Locomotives) Order 1956, SI 1956/1771, Sch 1) (see also PARA 782), do not apply to any new road in which a locomotive runs; and provisions as to coupling places in the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 58 (see PARA 777) do not apply to any working place or boarding point in a new road: Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 5(3), 6(2).

16 For this purpose a vehicle with open sides is one which is not closed in at both sides in such a way as to prevent persons or things projecting beyond the sides: see the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 4.

17 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 5(2)(a).

18 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 5(2)(b).

19 See the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, regs 7, 9. The regulations formerly empowered an inspector to require, by notice to the manager, the widening of clearances in old roads in order to avoid danger to employees (reg 8), but this provision was revoked, in consequence of the coming into operation of the Health and Safety at Work etc Act 1974, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1975, SI 1975/1102, reg 3, Sch 2. As to the general powers of inspectors under the Health and Safety at Work etc Act 1974 to require improvements see s 21; and PARA 377.

20 As to the posting of notices see PARA 774 text and note 21.

21 This provision is not confined to the travelling roads referred to in PARA 759.

22 The provisions of the Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217: see the text and notes 1-21.

23 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 10.

24 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 11(1), which is without prejudice to the Mines and Quarries Act 1954 s 36 (prohibition of use of vehicles and conveyors in roads not affording free movement: see PARA 773), but applies only (1) during such period immediately following the



occurrence as might reasonably have been expected in all the circumstances to be required in order to secure that the clearance is restored to the required width (Coal Mines (Clearance in Transport Roads) Regulations 1959, SI 1959/1217, reg 11(2)(a)); and (2) where there is no reasonable ground for apprehending that the running of the vehicles or the operation of the conveyor would result in injury to persons or animals using the road (reg 11(2)(b)).

25 As to the meaning of 'authorised inspector' see PARA 375 note 2.

26 As to the service of notices see PARA 774.

27 Coal Mines (Clearances in Transport Roads) Regulations 1959, SI 1959/1217, reg 12.

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### **779. Construction and use of vehicles.**

So long as vehicles are used in any mine<sup>1</sup> such safety devices must be provided, maintained<sup>2</sup> and used as are necessary to prevent accidents, caused by such vehicles running away<sup>3</sup>, which are likely to cause personal injuries<sup>4</sup>. Such devices must be placed in the mine or on the vehicles or both and, unless there is good reason to the contrary, must be of a kind designed to assume automatically the operating position<sup>5</sup>. In addition, the necessary steps must be taken to protect from bodily injury, in the event of a vehicle running away, any person who is at work, otherwise than as a matter of routine, in a place through which vehicles run or are accustomed to run<sup>6</sup>.

Without prejudice to the generality of the foregoing requirements to prevent accidents caused by vehicles running away, at mines of coal, stratified ironstone, shale or fireclay, a supply of sprags, lockers or drags must be provided, maintained and used for holding vehicles (1) at the top of inclines where gravity operated rope haulage apparatus<sup>7</sup> is in use; (2) wherever three or more vehicles are coupled or uncoupled; and (3) at suitable points where the gradient exceeds 1:20 and the haulage is by animal<sup>8</sup>. Stop blocks or similar contrivances must be provided and maintained at the top of such inclines (except where the haulage is by endless rope), and at every entrance by which vehicles are brought on to such an incline<sup>9</sup>; and, on every person-carrying train moved by mechanically operated rope haulage apparatus<sup>10</sup> not having an endless rope on any length of road with a gradient exceeding 1:12 there must be provided and maintained means of preventing the accidental disconnection of any vehicle<sup>11</sup>.

At such mines, a person moving a vehicle by hand down an incline of more than 1:12 must not go in front of it<sup>12</sup>; and no one must move a vehicle by hand down any incline in circumstances in which he cannot himself control it from behind unless there is provided<sup>13</sup> a contrivance to enable him to do so<sup>14</sup>.

At other mines, a supply of sprags, lockers or drags must be provided, maintained and used for holding vehicles at the top of every incline where gravity operated rope haulage apparatus is in use and at suitable points where the gradient exceeds 1:20<sup>15</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 As to the meaning of 'maintained' see PARA 459 note 3.

3 As to the meaning of 'running away' see *Jones v National Coal Board* [1965] 1 All ER 221, [1965] 1 WLR 532.

4 Mines and Quarries Act 1954 s 41(1).

5 Mines and Quarries Act 1954 s 41(1).

6 Mines and Quarries Act 1954 s 41(2).

7 As to the meaning of 'gravity operated rope haulage apparatus' see PARA 765 note 9.

8 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 5, 64(1)(a)-(c), (4). As to the application and continuance in force of these regulations see PARA 765 note 10.

9 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 64(2).

- 10 As to the meaning of 'mechanically operated rope haulage apparatus' see PARA 765 note 9.
- 11 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 64(3).
- 12 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 63(1).
- 13 It is submitted that in this context 'provided' means that the contrivance must be readily and obviously available or that the person to use it must have clear instructions where to obtain it: see *Finch v Telegraph Construction and Maintenance Co Ltd* [1949] 1 All ER 452, a case under the Factories Act 1937 s 49 (repealed) (goggles to be 'provided'); *Ginty v Belmont Building Supplies Ltd* [1959] 1 All ER 414; and see *Pape v Cumbria County Council* [1992] 3 All ER 211, [1992] ICR 132 (provision of protective gloves).
- 14 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 63(2).
- 15 Miscellaneous Mines (General) Regulations 1956 reg 26 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

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## **780. Signalling in roads.**

In any length of road<sup>1</sup> exceeding 25 metres in length in which vehicles or loads are, or may be, moved by rope haulage apparatus<sup>2</sup> or a conveyor, there must be provided and maintained<sup>3</sup> effective means of signalling from every point in it to the place at which the haulage apparatus or conveyor is operated<sup>4</sup>.

At mines of coal, stratified ironstone, shale or fireclay the signalling codes for use in roads in connection with various types of haulage and with conveyors are prescribed<sup>5</sup>, the use of signals other than those prescribed and any further signals which may be determined by the manager<sup>6</sup> is prohibited<sup>7</sup>; signalling notices must be kept posted<sup>8</sup>; and, except in an emergency, no one other than an official of the mine or a person authorised by the manager may transmit any signal in a road<sup>9</sup>. At any such mine, except one at which not more than 30 persons are employed or a mine of stratified ironstone in the Cleveland district, where vehicles can be moved by rope haulage apparatus or locomotives<sup>10</sup> from the entrance to a shaft<sup>11</sup> or unwalkable outlet<sup>12</sup> along a road for more than 900 metres, telephonic communication must be provided and maintained between the inbye end, that entrance and a point above ground<sup>13</sup>.

At other mines the manager must determine all signals to be used in connection with the operation of rope haulage apparatus or a conveyor in a road<sup>14</sup>, and signalling notices must be kept posted<sup>15</sup>.

1 As to the meaning of 'road' see PARA 759.

2 As to the meaning of 'rope haulage apparatus' see PARA 765 note 9.

3 As to the meaning of 'maintained' see PARA 459 note 3.

4 Mines and Quarries Act 1954 s 46 (amended by SI 1976/2063).

5 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 46. As to the application and continuance in force of these regulations see PARA 765 note 10.

6 As to the meaning of 'manager' see PARA 750 note 1.

7 See the Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, regs 46(1), 47.

8 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 49, which is expressed to apply also to unwalkable outlets.

9 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 50, which is expressed to apply also to unwalkable outlets.

10 As to the use of locomotives (defined in PARA 782 note 3) below ground see PARA 782.

11 As to the meaning of 'shaft' see PARA 763 note 15.

12 As to the meaning of 'unwalkable outlet' see PARA 763 note 3.

13 Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 80 (amended by SI 1978/1648). For unwalkable outlets made on or before 12 December 1978 (ie the operative date of the amending regulations), the maximum distance specified, along which vehicles may be moved without telephonic communication is 3,000 feet: Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960, SI 1960/69, reg 80 (as originally made).

14     Miscellaneous Mines (General) Regulations 1956 reg 25(1) (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

15     Miscellaneous Mines (General) Regulations 1956 reg 25(2).

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**781. Operation of conveyors.**

No conveyor may be operated<sup>1</sup> along a working face except by, or under the constant supervision of, a competent person<sup>2</sup>.

1 The operation of a face conveyor is a continuing process, and not confined to starting and stopping; thus constant attendance by the competent person is required: *McAully v National Coal Board* 1967 SLT (Sh Ct) 54.

2 Mines and Quarries Act 1954 s 44 (amended (to omit the word 'male') by the Employment Act 1989 ss 9(1), 29(4), Sch 7 Pt II; and by SI 2006/1031). As to the meaning of 'competent person' see PARA 748 note 7.

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## **782. Use of locomotives below ground.**

The consent<sup>1</sup> of an authorised inspector<sup>2</sup> must be obtained before any locomotive<sup>3</sup> is used below ground<sup>4</sup>. At mines of coal, stratified ironstone, shale or fireclay the use of locomotives below ground is subject to detailed provisions with regard to the design of locomotives<sup>5</sup>; the construction of tracks, their standards of height, width<sup>6</sup> and gradient<sup>7</sup>; the determination of the firedamp content<sup>8</sup> of the air in roads in which locomotives run<sup>9</sup>; the qualifications for driving, the method of working and the maintenance of locomotives<sup>10</sup>; the housing and fuelling of diesel locomotives<sup>11</sup>; and the management of storage battery locomotives<sup>12</sup>. Exemptions<sup>13</sup> from the foregoing detailed provisions may be granted by an authorised inspector<sup>14</sup>.

No locomotive or vehicle which uses an electrical storage battery, either partly or wholly, as a power source for traction purposes must be introduced below ground at a safety-lamp mine<sup>15</sup> unless it is an approved locomotive or vehicle<sup>16</sup>.

1 The consent may be varied or revoked. As to the variation or revocation of approvals, consents etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

2 As to the meaning of 'authorised inspector' see PARA 375 note 2.

3 'Locomotive' means a mechanically propelled vehicle running on rails and constructed or used for hauling other vehicles: Coal and Other Mines (Locomotives) Regulations 1956 reg 36(1). These regulations (which are contained in the Coal and Other Mines (Locomotives) Order 1956, SI 1956/1771, Sch 1), apply to every mine of coal, stratified ironstone, shale or fireclay (reg 1) and took effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

4 Mines and Quarries Act 1954 s 83 (amended by SI 1974/2013); Coal and Other Mines (Locomotives) Regulations 1956 reg 34. As to the use of engines and steam boilers see PARA 822.

5 See the Coal and Other Mines (Locomotives) Regulations 1956 reg 3(3) (amended by SI 1978/1648).

6 For exceptions from the application of the clearance provisions of the Coal and Other Mines (Locomotives) Regulations 1956 regs 6(3), 7(3) (as amended: see note 5) see PARA 778 note 15.

7 See the Coal and Other Mines (Locomotives) Regulations 1956 regs 6-9 (regs 6, 7 amended by SI 1978/1648).

8 'Firedamp content' means the percentage of inflammable gas present in the general body of the air: Coal and Other Mines (Locomotives) Regulations 1956 regs 11, 36(1).

9 See the Coal and Other Mines (Locomotives) Regulations 1956 regs 11-16 (reg 13 amended by SI 1978/1648).

10 See the Coal and Other Mines (Locomotives) Regulations 1956 regs 17-24 (reg 17 amended by SI 2006/1031; Coal and Other Mines (Locomotives) Regulations 1956 regs 21, 22 amended by SI 1978/1648).

11 See the Coal and Other Mines (Locomotives) Regulations 1956 regs 25-31 (reg 26 amended by SI 1978/1648).

12 See the Coal and Other Mines (Locomotives) Regulations 1956 regs 32, 33 (reg 32 amended by SI 1978/1648).

13 Exceptions may be varied or revoked. As to the variation or revocation of approvals, consents, exceptions etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

14 Coal and Other Mines (Locomotives) Regulations 1956 reg 35. See also regs 8, 11 proviso.

15 A 'safety-lamp' mine means (1) any coal mine; or (2) any other mine in which there has occurred below ground an ignition of firedamp or more than 0.25% by volume of firedamp is found on any occasion at any place below ground in the mine; and 'firedamp' means any flammable gas or any flammable mixture of gases occurring naturally in a mine: Electricity at Work Regulations 1989, SI 1989/635, reg 2(1).

16 Electricity at Work Regulations 1989, SI 1989/635, reg 26. For regulations relating to electricity in mines see PARA 805.



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## ***B. CONTROL OF GROUND MOVEMENT***

### **783. Ground control measures in all mines.**

It is the duty of the manager<sup>1</sup> of every mine<sup>2</sup> to ensure that such ground control measures<sup>3</sup> are taken as may be necessary for keeping secure every place in a mine where people work or pass<sup>4</sup>. This duty is to ensure security against any reasonably foreseeable risk to the health or safety of any person<sup>5</sup> and nothing in this provision requires the taking of such ground control measures with respect to a part of a mine every entrance to which is for the time being provided<sup>6</sup> with a suitable barrier or enclosure to prevent any person inadvertently entering that part<sup>7</sup>.

The manager of every mine must ensure that:

- 1676 (1) before any excavation is undertaken all factors which are likely to affect the movement of the ground at that place are assessed for the purpose of identifying the ground control measures which may need to be taken in order to comply with the above provisions;
- 1677 (2) the assessment is recorded in a document (the 'assessment of ground conditions'); and
- 1678 (3) the assessment of ground conditions is reviewed, and, where appropriate, revised if there is reason to suspect that there has been a material change in the matters to which it relates<sup>8</sup>.

The manager of every mine must also ensure that a document is prepared which, taking into account the assessment of ground conditions, describes those ground control measures which may need to be taken in order to comply with the above provisions (the 'design document') and that the design document is reviewed and, where appropriate, revised whenever there is a revision to the assessment of ground conditions<sup>9</sup>. He must ensure that there are prepared suitable and sufficient rules (the 'rules') which set out the ground control measures described above and instructions on how to implement them and that the rules are reviewed and, where appropriate, revised whenever there is a revision to the design document<sup>10</sup>. The manager must take such measures as are necessary to ensure that each person at work in the mine understands the rules which are relevant to that person<sup>11</sup>. He must<sup>12</sup> ensure that relevant extracts of the rules are posted in such a way that they can be seen easily and read by persons who work in the mine at the entrance to that part of the mine to which they apply and are made available to all persons at work in the mine whose duties include taking ground control measures or who have the responsibility of ensuring that such measures are taken<sup>13</sup>. Nothing in the relevant regulations<sup>14</sup> or in the rules, however, prevents a person at work in a mine from installing support material<sup>15</sup> additional to that which is required in the rules and which he has reason to believe is necessary for the purpose of securing the safety of himself or another<sup>16</sup>. Further, a rule which is inconsistent with the provisions of any relevant statutory provision<sup>17</sup> is, to the extent of the inconsistency, to be of no effect<sup>18</sup>.

Every official of a mine<sup>19</sup> must take all reasonable steps to ensure that the rules are implemented and that there is installed any support material which is additional to that which

is required in the rules and which he has reason to believe is necessary for the purpose of securing the safety of himself or another<sup>20</sup>.

The manager of every mine must ensure that:

- 1679 (a) an appropriate scheme for assessing the adequacy of the ground control measures in controlling the movement of the ground is prepared and implemented;
- 1680 (b) account is taken of any such assessment in the fulfilment of his duties under the relevant regulations; and
- 1681 (c) the assessment is recorded<sup>21</sup>.

1 For these purposes, 'manager' means in relation to any mine the person who is appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8 (see PARAS 748-750) as the manager of that mine and any person who is appointed under reg 15 (see PARA 748) as the manager for a part of that mine who is to be treated for these purposes as the manager in relation to that part: Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1).

2 'Mine' means a mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1): Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1).

3 'Ground control measure' means a measure designed to control the movement of the ground including the provision and installation of support materials: Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1). As to the meaning of 'support materials' see note 15; and as to their provision and installation see PARA 785.

4 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 4(1). Save where the contrary intention appears (see eg reg 8; and PARA 784), the 1999 regulations apply to all mines: reg 3.

Subject to reg 15(2), the Health and Safety Executive may, by a certificate in writing, exempt from all or any requirements or prohibitions imposed by the 1999 regulations any mine, or part of a mine or class of mines; and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 15(1). The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to (1) the conditions, if any, which it proposes to attach to the exemption; and (2) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced: reg 15(2). As to the Health and Safety Executive see PARA 361 et seq.

The Mines and Quarries Act 1954 s 157 (defences: see PARA 878) does not apply to any legal proceedings or prosecution which are based on an allegation of a contravention of the 1999 regulations: Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 16.

5 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 4(2).

6 Ie provided in pursuance of the Mines (Safety of Exit) Regulations 1988, SI 1988/1729, reg 8: see PARA 761.

7 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 4(3).

8 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 5.

9 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 6(1). The Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 35(1) (see PARA 393) applies to the design document as it applies to reports and records: Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 6(2).

10 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(1).

11 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(2).

12 Ie without prejudice to the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(2).

13 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(3).

14 Ie the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463.

15 'Support material' includes a prop, bar, arch girder, powered support, rockbolt and any other equipment or material designed for the purpose of controlling the movement of the ground: Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1).

16 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(4).

17 As to the meaning of 'relevant statutory provision' see PARA 302 note 24.

18 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(5).

19 'Official of the mine' means a person appointed in the management structure in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(1)(b) (see PARA 748) or to perform inspections in accordance with reg 12(2) (see PARA 753): Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1).

20 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 9.

21 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 10.

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#### **784. Notification of significant changes to ground control measures in coal mines.**

The following provisions apply to every mine<sup>1</sup> of coal<sup>2</sup>.

Not less than 28 days before making any significant change to any existing ground control measure<sup>3</sup> in use at a mine, the manager<sup>4</sup> of a mine to which these provisions apply must notify the Health and Safety Executive<sup>5</sup> in writing of the significant change proposed and must supply the Executive with a copy of such parts of the assessment of ground conditions<sup>6</sup>, the design document<sup>7</sup> and the rules<sup>8</sup> for that mine as may be relevant to the significant change proposed<sup>9</sup>.

No person may begin work to implement a significant change to any existing ground control measure in use at a mine until the 28 days referred to above have elapsed unless the Executive agrees otherwise in writing<sup>10</sup>.

1 As to the meaning of 'mine' for these purposes see PARA 783 note 2.

2 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 8(1). As to the application of those regulations and exemptions from them see PARA 783 note 4.

3 For these purposes, a significant change to an existing ground control measure in use at the mine includes any change which either results in a ground control measure being used at the mine for the first time or would result in a departure from the support system standards specified in the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, Schedule; but does not include a temporary change to any existing ground control measure in use in part of a mine where that change is made for the purposes of health and safety in consequence of an emergency or some other circumstance which was not reasonably foreseeable: reg 8(3). In determining whether a ground control measure is being used at a mine for the first time, no account is to be taken of a ground control measure used temporarily in accordance with reg 8(3): reg 8(4). As to the meaning of 'ground control measure' see PARA 783 note 3.

The support system standards for face workings are as follows (Schedule Pt I paras 1-6):

- 31 (1) in the case of face workings where props are used (a) the maximum distance between props in the same row must be 1.2 metres; (b) the maximum distance between adjacent rows of props must be 1.2 metres; (c) the sum of the distances between props in the same row and between adjacent rows of props must not exceed 2.1 metres; (d) bars must always be used above the props where the extracted height exceeds 0.6 metres; and (e) the maximum distance between the row of props closest to the face and the face must be, where an armoured conveyor is used and persons do not normally work on the face side of the conveyor, 2 metres, and in all other cases when filling or loading at the face has been completed, 0.9 metres;
- 32 (2) in the case of face workings where bars are used (a) the maximum distance between adjacent bars in the same row must be 1.2 metres; and (b) bars should be advanced as soon as is practicable after extraction and set so that the maximum distance between the end of the bar closest to the face and the face must be 0.4 metres;
- 33 (3) in the case of face workings where powered supports are used (a) such supports should be advanced as soon as is practicable after extraction and set so that the maximum distance between the end of the beam closest to the face and the face must be 0.5 metres; (b) during normal production at any place where a machine is used which shears mineral to a depth exceeding 0.4 metres, that machine must not be permitted to approach within 27 metres of any powered support which has not been advanced from the previous cut; and (c) where an immediate forward support system is used, the supports must be advanced as close as is practicable behind the coal getting machine and in any event, no more than 10 metres behind the coal getting machine; and for these purposes, 'powered support' means a support which is

advanced and set to the roof by mechanical energy; 'beam' means that part of a powered support system designed to be set to the roof; and 'immediate forward support system' means a system of supports designed to be advanced and set to the roof immediately after extraction by a coal-getting machine;

- 34 (4) in the case of face workings where packs are used (a) the maximum width of roof exposed by the working of mineral since the completion of the last pack must be 2.1 metres; and (b) the waste edge parallel to the face must be no more than 1.5 metres in advance of the front line of pack bounding that waste;
- 35 (5) in the case of face workings where persons work or pass more than 0.9 metres beyond the front row of props or other supports, temporary supports must be used and no person may work more than 0.9 metres from a temporary support.

In Schedule Pt I, 'face working' in relation to a working face at which supports are systematically withdrawn means all that part of the mine between the face and the front line of the packs, if any, or the last row of supports for the time being maintained whichever is further from the face and in relation to a working face at which supports are not systematically withdrawn means all that part of the mine between the face and a line parallel to it and 3.7 metres distant from it: Schedule Pt I para 7.

The support system standards for roadways are as follows: (i) in the case of roadways where props and bars are used as the principal support (A) the maximum distance between adjacent bars must be 1.2 metres; (B) the minimum number of props per bar must be 2; and (C) the maximum distance from the last bar to the face must be 3.5 metres; (ii) in the case of roadways where steel arches are used as the principal support (A) the maximum distance between adjacent arches must be 1.2 metres; and (B) the maximum distance between the last arch before the face and the face must be 3.5 metres; (iii) in the case of roadways where rockbolts are used as the principal support (A) the minimum density of rockbolts in the roof must be 1 bolt per square metre; (B) the minimum length of rockbolt in the roof must be 1.8 metres; and (C) the maximum distance between the last completed row of rockbolts and the face must be 3.5 metres; (iv) in the case of roadways where machines are used to cut and simultaneously load, the maximum advance per cycle of any such machine must be 1.2 metres; (v) in the case of roadways where persons work or pass in front of the last permanent support (A) temporary supports must be used; and (B) the maximum distance between the last permanent support and the first line of temporary supports must be 1.2 metres, except where props are used, when that distance must be 0.9 metres: Schedule Pt II paras 8-12. For the purposes of Schedule Pts I, II, 'bar' means a support designed to be set between a prop and the roof: Schedule Pt II para 13.

4 As to the meaning of 'manager' for these purposes see PARA 783 note 1.

5 As to the Health and Safety Executive see PARA 361 et seq.

6 'Assessment of ground conditions' means the document referred to and described in the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 5(b), as revised where necessary in accordance with reg 5(c) (see PARA 783): reg 2(1).

7 'Design document' means the document referred to and described in the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 6(1)(a) as revised where necessary in accordance with reg 6(1)(b) (see PARA 783): reg 2(1).

8 'Rules' means the rules referred to and described in the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 7(1)(a), as revised where necessary in accordance with reg 7(1)(b) (see PARA 783): reg 2(1).

9 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 8(2).

10 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 8(5).

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### **785. Supply, installation and withdrawal of support materials in all mines.**

No person may install any support materials<sup>1</sup> in a mine<sup>2</sup> other than those provided by the owner<sup>3</sup> of the mine<sup>4</sup>.

The manager<sup>5</sup> of every mine must ensure that a sufficient supply of suitable support material is at all times readily available at any place in the mine where a person whose duties include its installation (the 'installer') needs it for the purpose of keeping that place secure<sup>6</sup>. Where a sufficient supply of suitable support material is not readily available in accordance with this requirement the installer must withdraw to a place of safety and immediately report to an official of the mine<sup>7</sup> that he has done so<sup>8</sup>; and where it appears to an official of a mine that a sufficient supply of suitable support material is not readily available in accordance with the above requirement then the official must instruct the installer to withdraw to a place of safety<sup>9</sup>. Where the installer so withdraws to a place of safety<sup>10</sup> no official of the mine may permit the installer to return to his working place until that official is satisfied that the support material required<sup>11</sup> is readily available<sup>12</sup>.

Any person who is installing support material must install that material in accordance with the rules<sup>13</sup>.

Any person whose duties include the installation of support material at any place in a mine must, where any part of the roof or sides at that place has become exposed and support material is needed for the purpose of keeping the exposed area safe, either immediately install support material or, if he is unable to comply with this requirement, immediately withdraw to a place of safety, prevent access to the exposed area and report the matter to an official of the mine<sup>14</sup>. If it appears to any person whose duties include the installation of support material at any place in a mine that any such material at that place has become unsuitable or unstable, he must either replace or make stable that support material as soon as possible, or, if he is unable to comply with this requirement, immediately withdraw to a place of safety, prevent access to the place at which the support material has become unsuitable or unstable and report the condition of the support material to an official of the mine<sup>15</sup>. Any official of the mine who has received such notification<sup>16</sup> must take all reasonable steps to ensure that:

- 1682 (1) any person working or passing in the place where the support material needs to be installed, replaced or made stable, as the case may be, withdraws to a place of safety;
- 1683 (2) access to that place is prevented; and
- 1684 (3) as the case may be and as soon as possible, support material is installed or the support material which has become unsuitable or unstable is replaced or made stable<sup>17</sup>.

No person may withdraw support material from any place in a mine other than by a safe method and from a position of safety<sup>18</sup>.

1 As to the meaning of 'support material' see PARA 783 note 15.

2 As to the meaning of 'mine' for these purposes see PARA 783 note 2.

- 3 For these purposes, 'owner' has the meaning assigned to it by the Mines and Quarries Act 1954 s 181(1), (4) (see PARA 395 note 5): Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 2(1).
- 4 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(1). As to the application of the 1999 regulations, and exemptions from them, see PARA 783 note 4.
- 5 As to the meaning of 'manager' see PARA 783 note 1.
- 6 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(2).
- 7 As to the meaning of 'official of the mine' see PARA 783 note 19.
- 8 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(3).
- 9 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(4).
- 10 le in pursuance of either the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(3) or reg 11(4).
- 11 le required under the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(2).
- 12 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 11(5).
- 13 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 12(1). As to the meaning of 'rules' see PARA 784 note 8.
- 14 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 12(2).
- 15 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 12(3).
- 16 le under the Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 12(2)(b) or reg 12(3)(b).
- 17 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 12(4).
- 18 Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 13.

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**786. Fall of roof or sides in any mine.**

Where it appears to an official of a mine<sup>1</sup> that any fall of roof or sides has rendered unsuitable or unstable any place in the mine where any person is likely to work or pass, the official must take all reasonable steps to ensure:

1685 (1) that the roof or sides at the place in question is made secure before clearing debris, except to the extent that clearance is necessary for the installation of support material<sup>2</sup>; or

1686 (2) if he is unable to comply with head (1) above, that no person works or passes in the place where that fall has occurred, except in accordance with any directions given by the manager<sup>3</sup>.

<sup>1</sup> As to the meaning of 'official of a mine' see PARA 783 note 19; and as to the meaning of 'mine' for these purposes see PARA 783 note 2.

<sup>2</sup> As to the meaning of 'support material' see PARA 783 note 15.

<sup>3</sup> Mines (Control of Ground Movement) Regulations 1999, SI 1999/2463, reg 14. As to the meaning of 'manager' see PARA 783 note 1. As to the application of the 1999 regulations and exemptions from them see PARA 783 note 4.



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### **787. General precautions against intrushes.**

In order to prevent the unexpected intrush into mine workings of gas, water or material which flows when wet, the owner<sup>1</sup> and the manager<sup>2</sup> of a mine must each ensure that they are in possession of all information which indicates, or tends to indicate, the presence or absence, in the vicinity of any actual or proposed working, of (1) any disused workings<sup>3</sup>, whether mine workings or not<sup>4</sup>; (2) any rock or stratum containing or likely to contain water, whether dispersed or in natural cavities<sup>5</sup>; and (3) any material<sup>6</sup> that flows or is likely to flow when wet<sup>7</sup>. Each of them must take such steps as may be necessary to substantiate any such information which comes into his possession<sup>8</sup>. The owner and the manager must also each ensure that the other is immediately furnished with any such information which comes into his possession, and with details of any steps taken to substantiate it, and of any conclusion reached<sup>9</sup>.

Where any actual or proposed workings are in the vicinity of the sea, a lake or river or any other body of surface water, the owner and the manager must each take such steps as may be necessary to ascertain the total thickness of the strata between the workings and the surface water, and to satisfy himself that the strata are sufficiently reliable to prevent an intrush of water from the surface<sup>10</sup>. Each must ensure that the other is immediately furnished with any information so obtained<sup>11</sup>.

It is the duty of the manager to prevent any intrush of gas from disused workings, whether mine workings or not, or of water or material that flows or is likely to flow when wet from any source<sup>12</sup>.

1    Ie the owner for the time being: Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 2(1). For the general meaning of 'owner' see PARA 749 note 2. These regulations are health and safety regulations made under powers conferred by the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), 82(3)(a), Sch 3. As to the making of health and safety regulations see PARAS 424-425.

2    Ie the manager for the time being: Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 2(1). As to the meaning of 'manager' see PARA 750 note 1.

3    'Disused workings' includes disused shafts and bore holes: Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 2(1).

4    Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(1)(a)(i).

5    Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(1)(a)(ii).

6    Ie peat, moss, sand, gravel, silt or other material: Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(1)(a)(iii).

7    Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(1)(a)(iii).

8    Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(1)(b).

9    Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 4(2).

10   Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 5(1).

11   Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 5(2).

12   Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 3.



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### **788. Special precautions against intrushes.**

Mine workings must not be carried on in certain potentially hazardous areas unless the manager<sup>1</sup> has followed a prescribed procedure<sup>2</sup>. The areas concerned are those (1) within 45 metres of the surface<sup>3</sup>, of any rock or stratum containing or likely to contain water, whether dispersed or in natural cavities<sup>4</sup>, of any material<sup>5</sup> that flows or is likely to flow when wet<sup>6</sup>, or of any disused workings<sup>7</sup>, other than mine workings<sup>8</sup>; or (2) within 37 metres of any disused mine workings<sup>9</sup>.

The manager must obtain sufficient information to enable him to consider whether an intrush which it is his duty to prevent<sup>10</sup> may occur if the working is carried on without taking precautions<sup>11</sup>. If he is of the opinion that such an intrush will not occur he must ensure that working is not carried on unless he has given the district inspector<sup>12</sup> and the workers' representatives<sup>13</sup> at least 30 days<sup>14</sup> advance notice<sup>15</sup> of his reasons<sup>16</sup>. If subsequently there is an occurrence tending to indicate that such an intrush may occur unless precautions are taken, the manager must give notice of the occurrence as soon as practicable to the district inspector and the workers' representatives<sup>17</sup>.

Where the manager does not reach the opinion that such an intrush will not occur<sup>18</sup> he must ensure that the working is not carried on unless (a) he has prepared a scheme laying down a working procedure designed to ensure that an intrush does not occur<sup>19</sup>; and (b) he has sent the district inspector and the workers' representatives copies of the scheme at least 30 days<sup>20</sup> in advance, and of any modifications to the scheme as soon as practicable<sup>21</sup>.

Where any such working is being carried on<sup>22</sup>, the manager must ensure that the scheme and any modifications are executed and enforced<sup>23</sup>; and he must keep copies of the scheme and modifications, or notice<sup>24</sup>, in the office of the mine, or such other place as may be approved<sup>25</sup> by an authorised inspector<sup>26</sup>, and in the covered accommodation provided<sup>27</sup> for inspection of documents by employees<sup>28</sup>.

1 As to the meaning of 'manager' see PARA 750 note 1.

2 See the Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1).

3 Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(a)(i).

4 Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(a)(ii).

5 I.e. peat, moss, sand, gravel, silt or other material: Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(a)(iii).

6 Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(a)(iii).

7 As to the meaning of 'disused workings' see PARA 787 note 3.

8 Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(a)(iv).

9 Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 6(1)(b). The distances referred to are distances measured in any plane: reg 6(1).

10 I.e. an intrush to which the Mines (Precautions Against Intrushes) Regulations 1979, SI 1979/318, reg 3 refers: see PARA 787.

- 11 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(2).
- 12 As to the meaning of 'district inspector' see PARA 375 note 2.
- 13 'Workers' representatives' means (1) in relation to a coal mine, such persons as may for the time being be nominated for the purposes of the Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, by associations or bodies which represent underground employees there; (2) in relation to any other mine, such persons as may for the time being be appointed to make workmen's inspections (see PARA 383) or be appointed as safety representatives within the meaning of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500 (see PARA 450): Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(7).
- 14 The district inspector may allow shorter advance notice in a particular case: Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(3).
- 15 Where an association or body nominates or appoints more than one workers' representative, the manager is not required to notify, or send copies of a scheme or modifications to, more than one of such representatives: Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(8).
- 16 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(3).
- 17 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(4). See also note 15.
- 18 Ie if the Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(3) does not apply.
- 19 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(5)(a).
- 20 The district inspector may allow a shorter period in advance in a particular case: Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(5)(b)(i).
- 21 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(5)(b)(i), (ii).
- 22 See note 26.
- 23 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(6)(a).
- 24 For provisions requiring notice to be given see the Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(3), (4).
- 25 As to the variation or revocation of approvals, consents etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.
- 26 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 27 Ie in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36: see PARA 752.
- 28 Mines (Precautions Against Inrushes) Regulations 1979, SI 1979/318, reg 6(6). It is submitted that this provision applies in relation to workings carried on by virtue of both reg 6(3) and reg 6(5).

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#### **(iv) Ventilation and Dust Precautions**

##### **789. Provision of adequate ventilation.**

It is the duty of the manager<sup>1</sup> of every mine<sup>2</sup> to take necessary steps to secure that there is constantly produced<sup>3</sup> in certain parts<sup>4</sup> of a mine below ground ventilation adequate for diluting so as to render harmless any inflammable or noxious gases<sup>5</sup> or for removing them<sup>6</sup> and for providing air containing a sufficiency of oxygen<sup>7</sup>. Without prejudice to the general application of this requirement, ventilation is deemed not to be adequate for rendering carbon dioxide harmless if the amount of carbon dioxide in the general body of the air in the part of the mine concerned is more than 1.25 per cent by volume or such smaller percentage as may be prescribed<sup>8</sup>; nor is it deemed to be adequate for providing a sufficiency of oxygen unless there is not less than 19 per cent by volume of oxygen in that part of the mine in the general body of the air<sup>9</sup>.

In discharge of the duty so imposed upon him the manager must have regard to the desirability of securing the maintenance, as far as consistent with that duty, of reasonable working conditions as regards the temperature and humidity of the air and the amount of dust in it<sup>10</sup>.

If the ventilation in any part of a mine is interrupted<sup>11</sup> or ceases to be adequate<sup>12</sup>, the manager must secure that, until the ventilation is restored, access to that part is restricted so as to prevent unauthorised entry, and that no person is permitted to remain in or pass through that part, except for the purpose of restoring the ventilation or in an emergency<sup>13</sup>.

With respect to any waste, other than waste which is stopped off<sup>14</sup> or stowed up<sup>15</sup>, or waste in which there is known to be no inflammable gas and either no noxious gas or no such gas in a dangerous concentration<sup>16</sup>, it is the manager's duty to secure either that there is constantly produced<sup>17</sup> in that waste ventilation which is adequate according to the foregoing standards<sup>18</sup> or that appropriate steps are taken to minimise dangerous emissions of gas from that waste<sup>19</sup>.

1 'Manager' includes a temporary manager and a substitute supervisor: see PARA 750 note 1.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 See *McCarthy v Lewis* [1957] 1 QB 475, [1957] 1 All ER 556, where the similar provision of the Coal Mines Act 1911 s 29 (repealed) was held to have been violated where a fan was stopped for maintenance without alternative means of ventilation being provided; and *Knowles v Dickinson* (1860) 2 E & E 705 (breach of duty by failure to keep up ventilation during temporary suspension of work on Sundays); see also the text and note 11. As to the means of producing ventilation see PARA 790.

4 I.e. all parts of the mine below ground (Mines and Quarries Act 1954 s 55(1)) except (1) any part stopped off in a prescribed (see note 8) or approved manner or which is stowed up; (2) any waste; and (3) any other prescribed part (s 55(4)). As to the ventilation of waste see the text and notes 14-19. Under rules established by repealed legislation, which required an adequate amount of ventilation to be constantly produced to dilute and render harmless noxious gases to such an extent that the working places and the travelling roads should, under ordinary circumstances, be in a fit state for working and passing in them, it was held that the intention was that so much of the mine as was so contiguous to a working place that it might operate upon the working place should be kept ventilated: *Brough v Homfray* (1868) LR 3 QB 771; *Atkinson v Morgan* [1915] 3 KB 23, DC; cf *Kirby v National Coal Board* 1958 SC 514, Ct of Sess, where there was held to be no duty to ventilate parts of waste contiguous to working places.

5 'Gas' includes fume or vapour: Mines and Quarries Act 1954 s 182(1).

6 Mines and Quarries Act 1954 s 55(1)(a).

7 Mines and Quarries Act 1954 s 55(1)(b).

8 Mines and Quarries Act 1954 s 55(2)(a). 'Prescribed' means prescribed by regulations: s 141(5). Regulations prescribe a standard of dilution for inflammable gas: see the Coal and Other Mines (Ventilation) Regulations 1956 (contained in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1), made under the Mines and Quarries Act 1954 s 55(2) (partially repealed, but with a saving for existing regulations, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013). See PARAS 791 note 8, 792.

9 Mines and Quarries Act 1954 s 55(2)(b).

10 Mines and Quarries Act 1954 s 55(3). As to the removal of dust from the air see PARA 794 et seq.

11 See note 3. Quare whether this provision covers both accidental and intentional interruption of ventilation.

12 Is adequate for the purposes mentioned in the Mines and Quarries Act 1954 s 55(1); see the text and notes 5-7.

13 Mines and Quarries Act 1954 s 55(5). As to the manager's duty to test the ventilation after blasting which may have brought about changed conditions possibly affecting its adequacy see *Wright v Imperial Chemical Industries Ltd* (1965) 109 Sol Jo 232.

14 Is in a prescribed manner (see note 8) or manner approved by an inspector: Mines and Quarries Act 1954 s 56(1)(a).

15 Mines and Quarries Act 1954 s 56(1)(a).

16 Mines and Quarries Act 1954 s 56(1)(b).

17 See note 3. With regard to the ventilation of wastes there is no provision as to interruption; cf the text and note 11.

18 Mines and Quarries Act 1954 s 56(2)(a). 'Adequate' means adequate for the purposes mentioned in s 55(1) (see the text and notes 5-7), and according to the standards required by s 55(2) (see the text and notes 8-9): s 56(2)(a), (3).

19 Mines and Quarries Act 1954 s 56(2)(b).

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### **790. Ventilating apparatus.**

Unless adequate ventilation in all those parts of a mine<sup>1</sup> which are required to be ventilated<sup>2</sup> is produced wholly by natural means, there must be provided and maintained<sup>3</sup> on the surface mechanically operated apparatus capable of producing in all such parts of the mine sufficient ventilation, apart from any ventilation mechanically produced below ground, to enable all persons below ground at any one time to leave the mine safely; and, if such apparatus is not normally used, it must be used at least once a week and kept constantly available for use<sup>4</sup>.

If any surface ventilating apparatus at a coal mine is not capable of both forcing air into, and exhausting air from, the mine, there must be provided, maintained and kept constantly available for use adequate means of reversing the direction of flow of the ventilation produced by it<sup>5</sup>.

Regulations may exempt any prescribed class of mine from the above requirements as to the provision of ventilating apparatus and an authorised inspector<sup>6</sup> may so exempt any particular mine<sup>7</sup>; but no such exemptions<sup>8</sup> must be granted unless the Secretary of State<sup>9</sup> or the authorised inspector, as the case may be, is satisfied that no person employed will thereby be exposed to undue risk<sup>10</sup>. It is unlawful to use a fire for ventilation in a mine or, except with the consent of an authorised inspector, to release compressed air for diluting or removing inflammable or noxious gas<sup>11</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 As to the parts of a mine required to be ventilated see PARA 789 note 4.

3 As to the meaning of 'maintained' see PARA 459 note 3.

4 Mines and Quarries Act 1954 s 58(1). For regulations governing the provision and use of ventilating machinery see PARAS 789, 791 et seq.

5 Mines and Quarries Act 1954 s 58(2).

6 As to the meaning of 'authorised inspector' see PARA 375 note 2.

7 Mines and Quarries Act 1954 s 58(3).

8 As to exemptions generally see PARA 425.

9 As to the Secretary of State see PARA 360.

10 Mines and Quarries Act 1954 s 58(3) proviso. No general regulations were made for this purpose, and it would seem that any such provision would now be made by health and safety regulations; see PARA 424.

11 Mines and Quarries Act 1954 s 58(4). As to offences and penalties generally see PARA 852 et seq.

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### **791. Leakage of air between airways in coal, etc mines.**

Where, of any two lengths of different passages in a mine of coal, stratified ironstone, shale or fireclay, one has been made on or after 1 January 1957<sup>1</sup>, then, unless there is, without any steps having been taken to that end, no or no appreciable leakage of air between them, it is unlawful to use one of those passages as part of an intake airway and the other as part of a return airway unless the necessary steps are taken to minimise the leakage of air between them<sup>2</sup>. This requirement does not, however, prevent the use as an airway of so much of any passage as lies within the relevant distance from a working face<sup>3</sup> to or from which the air passes<sup>4</sup>, the relevant distance being 150 metres or such other distance as an authorised inspector<sup>5</sup> may, by notice served<sup>6</sup> on the manager, determine<sup>7</sup>.

For the prevention of leakages of air at such mines, the provision in certain cases of efficient air-locks<sup>8</sup>, ventilating doors<sup>9</sup> and sheets<sup>10</sup>, and the efficient stopping off of any road<sup>11</sup> not required for the working of the mine and which connects intake and return airways<sup>12</sup>, are also required.

1 The making of, or of any part of, the other of the two lengths may be at any date: Mines and Quarries Act 1954 s 59(1).

2 Mines and Quarries Act 1954 s 59(1).

3 'Working face' does not include a place in a road at which ripping or work of repair is in progress: Mines and Quarries Act 1954 s 59(2)(b).

4 Mines and Quarries Act 1954 s 59(1) proviso.

5 As to the meaning of 'authorised inspector' see PARA 375 note 2.

6 As to the meaning of 'notice' see PARA 774 note 18, and as to the service of notices see PARAS 388-389.

7 Mines and Quarries Act 1954 s 59(2)(a) (amended by SI 1976/2063). The distance must be measured from any point on the working face in a straight line on any plane: Mines and Quarries Act 1954 s 59(2)(a) (as so amended).

8 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 20(1), (3), (4) (contained in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1). These regulations apply to every mine of coal, stratified ironstone, shale or fireclay (reg 1) and took effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

9 Such doors must be self-closing: Coal and Other Mines (Ventilation) Regulations 1956 reg 22(4). Where such a door failed to close so that a second door was caused to slam by the rush of air and so injure a workman it was held that this provision was solely designed to provide for the maintenance of ventilation and not to safeguard the workman from such injury: *Spence v National Coal Board* 1956 SLT (Sh Ct) 37.

10 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 22.

11 As to the meaning of 'road' see PARA 759.

12 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 21 (amended by SI 1976/2063).



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## **792. Special ventilation requirements at coal, etc mines.**

At mines of coal, stratified ironstone, shale or fireclay, the manager must, without prejudice to his general duty to provide adequate ventilation<sup>1</sup>, take the necessary steps to secure that every airway which, as regards any working face<sup>2</sup>, is an intake airway and the air in which has not previously ventilated a working face is normally kept free from inflammable gas<sup>3</sup>; but the requirement does not apply to that part of such an airway which is within 90 metres of the first working place<sup>4</sup> at the face<sup>5</sup>. An airway is not deemed to be kept free from such gas if the average percentage by volume found in six samples taken by an authorised inspector<sup>6</sup> in the general body of the air in the airway at intervals of not less than 14 days exceeds one quarter<sup>7</sup>.

The percentage of inflammable gas in the general body of the air, called the 'firedamp content', must be determined by a competent person<sup>8</sup> appointed by the manager<sup>9</sup> in any part of a mine in which the use of permitted lights<sup>10</sup> only is lawful and in which electric power is used within 45 metres of a working face or shots<sup>11</sup> are fired<sup>12</sup>. The determination must be made in a prescribed manner, at prescribed intervals and at prescribed points in the mine<sup>13</sup> and must be recorded in a book provided by the owner<sup>14</sup>. Any firedamp content, other than at the junction of a longwall face return airway with another return airway<sup>15</sup>, which exceeds 1 per cent by volume must immediately be reported to the district inspector<sup>16</sup> unless he has otherwise directed<sup>17</sup> or unless the excess was caused by a temporary derangement of the ventilation which has been remedied<sup>18</sup>. The manager must make arrangements for measuring the quantity of air passing specified points in the mine at intervals not exceeding 30 days<sup>19</sup>, and such measurements, along with information incidental thereto, must be recorded in a book provided by the owner<sup>20</sup>.

At every such mine in any part of which the use of permitted lights only is lawful, devices of an approved type for the detection of inflammable gas must be provided, adjusted, maintained and tested<sup>21</sup>, and must be used at specified places in the mine<sup>22</sup>. Each detector must be in the personal charge of a competent person appointed by the manager, who must use it as instructed by the manager and in accordance with the statutory requirements<sup>23</sup>.

Certain instruments must be provided in connection with every mechanically driven fan, other than an auxiliary fan<sup>24</sup>, and the driving of such fans and the use of fans installed below ground are controlled<sup>25</sup>. The installation and use of auxiliary fans is made subject to certain conditions<sup>26</sup>, and no fan other than an auxiliary fan may be installed below ground unless the manager is satisfied, on the strength of an expert survey and report, that it is necessary or expedient to do so<sup>27</sup>.

Every ventilating sheet in a naked light mine<sup>28</sup> must be of fire-resisting material and must be properly maintained<sup>29</sup>; and any person who moves any ventilating sheet in any mine must ensure that it is promptly replaced<sup>30</sup>.

Where any sheets or ducts are used to ventilate a working place, other than one in a shaft<sup>31</sup> being sunk, it is the duty of the appointed supervisor or inspector<sup>32</sup> or other official in charge of that part of the mine to ensure that they are so placed and maintained that an adequate current of air reaches the working place<sup>33</sup>.

An authorised inspector is given powers of exemption in relation to certain of these provisions relating to inflammable gas, the prevention of leakages of air and fans below ground<sup>34</sup>.

- 1 See the Mines and Quarries Act 1954 s 55; and PARA 789.
- 2 'Working face' does not include a place in a road (defined in PARA 759) or roadhead at which ripping or repair work is in progress: Coal and Other Mines (Ventilation) Regulations 1956 reg 33(1) (contained in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1). As to the application and continuance in force of these regulations see PARA 791 note 8.
- 3 Coal and Other Mines (Ventilation) Regulations 1956 regs 1, 2(1). As to the meaning of 'gas' see PARA 789 note 5.
- 4 It is submitted that in this context 'working place' means a place at which a person works at any time, regardless of whether any person is actually working there.
- 5 Coal and Other Mines (Ventilation) Regulations 1956 reg 2(1) proviso (amended by SI 1976/2063).
- 6 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 7 Coal and Other Mines (Ventilation) Regulations 1956 reg 2(2).
- 8 As to the meaning of 'competent person' see PARA 748 note 7.
- 9 As to such appointments see PARA 750.
- 10 'Permitted lights' mean locked safety lamps, and any other means of lighting the use of which below ground in mines generally, in mines of a class to which that mine belongs, or in that mine is authorised by regulations or health and safety regulations: Mines and Quarries Act 1954 s 182(1) (amended by SI 1989/635).
- 11 As to shotfiring see PARA 806 et seq.
- 12 Coal and Other Mines (Ventilation) Regulations 1956 reg 3 (amended by SI 1966/1139 and SI 1976/2063). As to the mode of determination see the Coal and Other Mines (Ventilation) Regulations 1956 reg 4.
- 13 See the Coal and Other Mines (Ventilation) Regulations 1956 regs 5-7A (regs 5-7 variously amended by SI 1960/1116; SI 1969/1139; SI 1976/2063; and the Coal and Other Mines (Ventilation) Regulations 1956 reg 7A added by SI 1966/1139; and amended by SI 1976/2063).
- 14 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 8(1). As to the meaning of 'owner' for the purposes of the Mines and Quarries Act 1954 see PARA 395 note 5.
- 15 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 7A (as added: see note 13).
- 16 'District inspector' means an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19(2)(b) (see PARA 375) for carrying into effect the provisions of the Mines and Quarries Act 1954 and the Mines and Quarries (Tips) Act 1969 in the district in which the mine or quarry is situated: Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 6, which also referred to the Mines Management Act 1971 which, however, is repealed by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 41(3), without any corresponding consequential amendments having been made.
- 17 Ie by notice served on the manager. As to the service of notices see PARA 774. As to the variation or revocation of approvals, consents, directions etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.
- 18 Coal and Other Mines (Ventilation) Regulations 1956 reg 8(2) (amended by SI 1966/1139).
- 19 Coal and Other Mines (Ventilation) Regulations 1956 reg 9(1). As to the taking of the measurement see reg 9(2)-(4) (reg 9(2) amended by SI 1976/2063).
- 20 Coal and Other Mines (Ventilation) Regulations 1956 reg 9(5).
- 21 Coal and Other Mines (Ventilation) Regulations 1956 reg 10.
- 22 See the Coal and Other Mines (Ventilation) Regulations 1956 regs 12-17 (reg 12 amended by SI 1976/2063; Coal and Other Mines (Ventilation) Regulations 1956 reg 17 amended by SI 1993/1897).
- 23 Coal and Other Mines (Ventilation) Regulations 1956 reg 11.

24 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 18(1). 'Auxiliary fan' means a fan used or intended to be used below ground wholly or mainly for ventilating a heading, drift or blind end: reg 33(1).

25 See the Coal and Other Mines (Ventilation) Regulations 1956 regs 18(2), 19, 23 (reg 23 amended by SI 1993/1897).

26 See the Coal and Other Mines (Ventilation) Regulations 1956 regs 24-27 (reg 24 amended by SI 1976/2063; Coal and Other Mines (Ventilation) Regulations 1956 reg 27 amended by SI 1993/1897).

27 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 28.

28 A naked light mine is one in which naked lights are in use: see the Coal and Other Mines (Ventilation) Regulations 1956 reg 29.

29 Coal and Other Mines (Ventilation) Regulations 1956 reg 29. As to the meaning of 'maintained' see PARA 459 note 3.

30 Coal and Other Mines (Ventilation) Regulations 1956 reg 30.

31 As to the meaning of 'shaft' see PARA 763 note 15.

32 Ie the person appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2)(a) (see PARA 748) or reg 12(1) (see PARA 753): Coal and Other Mines (Ventilation) Regulations 1956 reg 31 (amended by SI 1993/1897).

33 Coal and Other Mines (Ventilation) Regulations 1956 reg 31 (as amended: see note 32).

34 See the Coal and Other Mines (Ventilation) Regulations 1956 reg 32.

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### **793. Special ventilation requirements not limited to coal, etc mines.**

Any person who opens any ventilating door or removes any ventilating screen or sheet at a mine other than a mine of coal, stratified ironstone, shale or fireclay must close or replace it immediately<sup>1</sup>. Every employee at work in any mine must take any necessary steps open to him to avoid interruption of ventilation at the mine by the accumulation of minerals, vehicles or materials<sup>2</sup>.

The general provisions as to the inspection of any mine must in particular relate to inspection for the presence of firedamp, where appropriate, and to inspection of ventilation, of such frequency as to ensure that the district<sup>3</sup> is safe to enter and work in, so far as that inspection can establish<sup>4</sup>. Barometric pressure at any mine must be measured before the start of every shift<sup>5</sup>.

A plan must be kept at the office of the mine, or at some other place approved by the Health and Safety Executive, showing the system of ventilation and in particular the general direction of the flow of ventilation, the points at which the quantity of air passing is assessed, and the location of the principal devices for regulating the flow of ventilation<sup>6</sup>.

1 Miscellaneous Mines (General) Regulations 1956 reg 65 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1). As to the corresponding provisions in relation to mines of coal, stratified ironstone, shale or fireclay, see the Coal and Other Mines (Ventilation) Regulations 1956 regs 22, 29-31 (see PARAS 791 text and notes 9-10, 792 text and notes 28-33) (contained in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1). As to the application and continuance in force of these regulations see PARA 791 note 8.

2 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(2) (b). As to the meaning of 'mine' PARA 748 note 1. As to the 1993 regulations generally see PARAS 748-756.

3 As to the division of a mine into districts see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(1)-(4); and PARA 753.

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(5). As to other duties in relation to this inspection see reg 12(6)-(11); and PARA 753.

5 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 13(2). See PARA 750 text to notes 14-16.

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29(5). The owner and manager must provide the surveyor for the mine with all plans, drawings and other relevant documents and information requisite for preparing the plan described in the text, and must give the surveyor access to all the workings of the mine (including those which have been discontinued) for the purpose of preparing or revising that plan: reg 30. As to the surveyor for the mine see regs 27, 28; and PARA 754. As to the Health and Safety Executive see PARA 361 et seq.

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#### **794. General precautions against dust.**

It is the duty of the manager of every mine<sup>1</sup> to ensure that, in connection with the getting, dressing and transporting of minerals<sup>2</sup> below ground, the giving off of any inflammable dust is minimised<sup>3</sup>. Where any such dust is so given off in the carrying on of any operations or process below ground or in a building on the surface, it is the manager's duty to ensure (1) that its entry into the air or its dangerous or harmful accumulation in any place is minimised by steps taken as near as possible to the point of origin of the dust; (2) that any dust which enters the air is trapped or harmlessly dispersed; and (3) that any dust which does accumulate where it might be dangerous or harmful is either systematically cleaned up and removed or treated in a manner approved by the Health and Safety Executive so as to render it harmless<sup>4</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1. As to the meaning of 'manager' see PARA 750 note 1.

2 As to the meaning of 'minerals' see PARA 343 note 1.

3 Mines and Quarries Act 1954 s 74(1) (amended by SI 2007/1894).

4 Mines and Quarries Act 1954 s 74(2) (amended by virtue of SI 1974/2013; and by SI 2007/1894). As to the Health and Safety Executive see PARA 361 et seq.

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### **795. Precautions against inflammable dust in certain coal mines.**

The manager of every coal mine must ensure that no vehicle is used for transporting material consisting wholly or mainly of coal dust (not being anthracite dust) along any length of road<sup>1</sup> in which there is any electric cable or apparatus, unless the material is so enclosed as to prevent the dust being thrown into the air in the event of the vehicle being upset<sup>2</sup>.

At every coal mine, other than one in which the floor, roof and sides of the roads are naturally wet throughout, it is the manager's duty to ensure that the entry of dust from the screens into any downcast shaft is minimised, and at any such mine newly opened after 16 December 1911, unless exempted<sup>3</sup> by an authorised inspector<sup>4</sup>, the coal screening or sorting plant must not be within 75 metres of any downcast shaft<sup>5</sup>.

In every length of road in every coal mine, other than a road used only in connection with the working of anthracite or one within 10 metres of a coal face and which is a chute down which coal is thrown from the face, which is required to be ventilated<sup>6</sup>, the manager must ensure that any dust which can be raised into the air contains not less than a specified percentage of incombustible matter<sup>7</sup>. For this purpose a standard for incombustible matter is laid down, and the systematic collection and analysis of samples is required<sup>8</sup>. The result of every analysis must be entered in a book provided by the owner<sup>9</sup> and specified in a notice kept in the covered accommodation provided for the inspection of documents by employees<sup>10</sup>.

In every area of a coal mine (1) in which there are one or more lengths of road on which any coal (other than anthracite) is carried by conveyor<sup>11</sup>; and (2) throughout which any flame caused by an ignition of inflammable gas or dust occurring at a working coal face, or at such other place as the manager may determine, is likely to extend, the manager must ensure that barriers to the extension of that flame, of a type approved by the Health and Safety Executive<sup>12</sup>, are provided and maintained<sup>13</sup> in or near to one or more such lengths of road<sup>14</sup>. The manager must prepare a scheme for each such area specifying the position and type of each barrier, and the scheme or a copy must be kept at the office at the mine or at such other place as an authorised inspector may approve<sup>15</sup>. An authorised inspector may, if he considers it desirable for safety reasons, by notice require the manager to make such amendments as may be specified in the notice<sup>16</sup>. The manager may require a reference upon such a notice<sup>17</sup>.

1 As to the meaning of 'road' see PARA 759.

2 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10. These regulations, which are contained in the Coal Mines (Precautions against Inflammable Dust) Order 1956, SI 1956/1769, Schedule, took effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

3 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 3 proviso. As to the variation or revocation of approvals, consents, exemptions etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

4 As to the meaning of 'authorised inspector' see PARA 375 note 2.

5 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 regs 1-3 (reg 3 amended by SI 1974/2124).

- 6 As to what roads are required to be ventilated see PARA 789.
- 7 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 regs 4, 5(1) (reg 4 amended by SI 1974/2124). For the specified percentage of incombustible matter see the Coal Mines (Precautions against Inflammable Dust) Regulations 1956 Schedule. 'Incombustible matter' includes moisture: reg 5(2).
- 8 See the Coal Mines (Precautions against Inflammable Dust) Regulations 1956 regs 6-9 (all amended by SI 1974/2124; Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 7 also amended by SI 1977/913).
- 9 See the Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 7(4).
- 10 See the Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 7(5). As to such accommodation see PARA 752.
- 11 For this purpose 'conveyor' means a single conveyor not less than 45 metres long, or two or more conveyors operating as one unit which together are not less than 45 metres long: Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(5) (reg 10A added by SI 1960/1738; Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(1), (5) amended by SI 1974/2124).
- 12 As to the Health and Safety Executive see PARA 361 et seq.
- 13 As to the meaning of 'maintained' see PARA 459 note 3.
- 14 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(1) (as added and amended: see note 11).
- 15 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(2) (as added: see note 11).
- 16 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(3) (as added: see note 11).
- 17 Coal Mines (Precautions against Inflammable Dust) Regulations 1956 reg 10A(4) (as added: see note 11). As to references upon notices see PARA 774 note 20.

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#### **796. Special precautions against inhalable dust in certain coal mines.**

Health and safety regulations<sup>1</sup> prescribe precautions to be taken with a view to protecting persons at work below ground in coal mines<sup>2</sup> against a risk to their health arising from exposure to inhalable dust<sup>3</sup> of mineral origin<sup>4</sup>.

No manager<sup>5</sup> may permit work to be carried out which is liable to expose persons to inhalable dust until (1) he, or a person appointed by him with competence in underground mining practice and sampling techniques, has made a suitable and sufficient assessment of the risk<sup>6</sup> created by that work to the health of those persons and of the steps that need to be taken to meet the requirements of the regulations<sup>7</sup>; and (2) the steps referred to in head (1) above have been implemented<sup>8</sup>. The risk assessment must be reviewed regularly, and forthwith if (a) there is reason to suspect that the risk assessment is no longer valid; (b) there has been a significant change in the work to which the risk assessment relates; or (c) the results of any sampling carried out<sup>9</sup> show it to be necessary; and where, as a result of the review, changes to the risk assessment are required, those changes must be made<sup>10</sup>. The manager must ensure that the significant findings of the risk assessment and the steps that need to be taken to meet the requirements of the regulations are recorded<sup>11</sup>. Within one month of the commencement of work, the manager must ensure that the results of the risk assessment have been validated by the taking and subsequent evaluation of suitable and sufficient air samples<sup>12</sup>.

Without prejudice to the requirements relating to excessive dust<sup>13</sup>, the manager must ensure that the exposure of persons at work to inhalable dust is either prevented or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable<sup>14</sup>. Where it is not reasonably practicable to prevent the exposure of persons at work to inhalable dust, and having regard to the risk assessment, the manager must comply with his duty to reduce that exposure to as low a level as is reasonably practicable by the application of the following measures, in order of priority: (i) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials; (ii) the control of exposure at source, including adequate local ventilation systems and appropriate organizational measures; (iii) the control of the working environment, including general ventilation; and (iv) the provision of suitable respiratory protective equipment<sup>15</sup> in addition to the measures required by heads (i), (ii) and (iii) above<sup>16</sup>. The measures referred to in heads (i) to (iv) above must be recorded in the form of a suitable and sufficient scheme to reduce exposure to inhalable dust and must include the adoption of suitable maintenance procedures and reducing to the minimum for the work concerned the level and duration of exposure and the number of persons subject to exposure<sup>17</sup>. As soon as is practicable, the manager must provide the Health and Safety Executive with a copy of the scheme and, thereafter, any significant revision to that scheme<sup>18</sup>. Every manager who provides any control measure<sup>19</sup>, other thing or facility in accordance with the required scheme must take all reasonable steps to ensure that it is properly used or applied as the case may be<sup>20</sup>, and every employee must make full and proper use of any control measure, other thing or facility provided in accordance with the scheme and, where relevant, must take all reasonable steps to ensure it is returned after use to any accommodation provided for it and, if he discovers a defect therein, must report it forthwith to his supervisor<sup>21</sup>.

Where the manager provides any control measure to meet the relevant requirements<sup>22</sup>, he must ensure that, where relevant, it is maintained in an efficient state, in efficient working



order and in good repair<sup>23</sup>. Where engineering controls are provided to meet the relevant requirements, the manager must ensure that thorough examination and testing of those controls is carried out at suitable intervals as part of the required scheme<sup>24</sup>. Where respiratory protective equipment (other than disposable respiratory protective equipment) is provided to meet the relevant requirements, the manager must ensure that thorough examination and, where appropriate, testing of that equipment is carried out at suitable intervals, and that a well-defined place is used for storage of that equipment<sup>25</sup>. The manager must keep a suitable record of the examinations and tests carried out in accordance with these provisions and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary thereof must be kept available for at least five years from the date on which it was made<sup>26</sup>.

The manager must operate a suitable and sufficient sampling scheme designed to measure the levels of respirable dust<sup>27</sup> and quartz to which persons are exposed below ground at the mine<sup>28</sup> and must appoint a competent person to supervise the operation of the sampling scheme<sup>29</sup>. The mine owner must make arrangements to ensure that the respirable dust content<sup>30</sup> and, unless it would be inappropriate, the quartz content<sup>31</sup> of each sample required to be taken is determined at a suitable laboratory<sup>32</sup>. The mine owner must make arrangements to ensure that (A) the mine manager is notified of the respirable dust content and, where appropriate, the quartz content of each sample determined as above, where an exposure control limit<sup>33</sup> is exceeded, immediately, and in all other cases, within four working days<sup>34</sup> of the sample being taken; and (B) a record is kept of each such determination<sup>35</sup>. As soon as is practicable, the mine owner must provide the Executive with details of the required arrangements and, thereafter, any significant revision to those arrangements<sup>36</sup>. The manager must ensure that a notice specifying every respirable dust content and quartz content notified to him is displayed in the covered accommodation<sup>37</sup> for a period of 30 days commencing with the date of notification<sup>38</sup>. The manager must ensure that a suitable record of sampling carried out for the purpose of the relevant regulations is made and maintained and that that record or a suitable summary thereof is kept available for at least five years from the date of the last entry made in it<sup>39</sup>.

Where a manager is notified that a sample determination made as part of the sampling scheme exceeds the exposure control limit for respirable dust<sup>40</sup> or the exposure control limit for quartz<sup>41</sup>, he must (aa) determine the reason why the relevant exposure control limit was exceeded; (bb) take any appropriate remedial action; and (cc) within 15 working days of receipt of that notification, ensure that a further five samples have been taken on five representative working shifts in order to determine the state of compliance with the relevant exposure control limit; or (dd) if it is not practicable to comply with head (cc) above he must either apply to the Executive in writing for consent to an extended period of time within which to complete the taking of the five samples or ensure that relevant operations<sup>42</sup> are stopped in the affected part of the mine, leaving that part in a safe condition, and inform the Executive in writing accordingly<sup>43</sup>. If the average of the five sample determinations exceeds the exposure control limit for respirable dust or the exposure control limit for quartz, the manager must either ensure that relevant operations are stopped in the affected part of the mine as soon as this can be done consistently with leaving that part in a safe condition, and inform the Executive in writing accordingly or permit relevant operations to continue in the affected part of the mine and provide justification for that decision to the Executive in writing forthwith<sup>44</sup>. If the manager has permitted relevant operations to continue, he must ensure that a further five samples have been taken on five representative working shifts within 15 working days of receipt of the notification of the findings of the sample determinations referred to above<sup>45</sup>. If the average of those five sample determinations exceeds the exposure control limit for respirable dust or the exposure control limit for quartz, the manager must ensure that relevant operations are stopped in the affected part of the mine and inform the Executive accordingly in writing<sup>46</sup>. Where relevant operations have been stopped<sup>47</sup>, the mine owner must not permit relevant operations to be resumed until he is satisfied that all measures necessary to protect the health of workers at the mine have been taken; he has provided sufficient justification to the

Executive in writing<sup>48</sup>; and he has received the consent of the Executive to resume relevant operations<sup>49</sup>, which may be subject to such conditions as the Executive may impose<sup>50</sup>.

Every employer must ensure that those of his employees who are, or who are liable to be, exposed to inhalable dust are placed under health surveillance by a doctor<sup>51</sup>, unless that exposure is not significant<sup>52</sup>. The employer must ensure that a health record, containing particulars approved by the Executive, in respect of each of his employees to whom the above provision applies is made and maintained and that that record or a copy thereof is kept available in a suitable form for at least 40 years from the date of the last entry made in it<sup>53</sup>. Where, as a result of health surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a doctor to be the result of exposure to inhalable dust, the manager must review the risk assessment and review any prevention or control measure<sup>54</sup>, taking into account any advice given by a doctor or by the Executive, and the employer of that employee must (i) ensure that a doctor informs the employee accordingly and provides the employee with information and advice regarding further health surveillance; (ii) consider assigning the employee to alternative work where there is either a lower exposure to inhalable dust or no such exposure, taking into account any advice given by a doctor; and (iii) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination<sup>55</sup> where such an examination is recommended by a doctor or by the Executive<sup>56</sup>. Where, for the purpose of carrying out his functions under the relevant regulations, a doctor requires to inspect any workplace or any record kept for the purposes of those regulations, the employer or the owner as the case may be must permit him to do so<sup>57</sup>.

Where an employer undertakes work which is liable to expose an employee to inhalable dust, he must provide that employee with suitable and sufficient information, instruction and training<sup>58</sup>. Such information, instruction and training must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer and must be provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment<sup>59</sup>. The employer must also ensure that any person (whether or not his employee) who carries out work in connection with the employer's duties under the relevant regulations has suitable and sufficient information, instruction and training<sup>60</sup>.

1     I.e. the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894. As to the meaning of 'health and safety regulations' see PARA 424 note 2. The regulations are supported by an approved code of practice and guidance. As to codes of practice approved by the Health and Safety Executive see PARA 426; and as to the Health and Safety Executive see PARA 361 et seq.

2     As to the meaning of 'mine' see PARA 343 note 1; definition applied by the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

3     'Inhalable dust' means airborne material which is capable of entering the nose and mouth during breathing, as defined by BS EN 481 1993: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2. Copies of British Standard BS EN 481 1993 are obtainable from British Standards Institution, BSI House, 389 Chiswick High Road, London W4 4AL.

4     See the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 3(1). The regulations do not apply to a tourist mine (ie a mine the principal activity of which is to demonstrate the mine or the workings of the mine to persons not at work at the mine; rather than the getting of minerals or the products of minerals: reg 2); reg 3(2). Subject to reg 13(2) the Executive may, by a certificate in writing, exempt any person or class of persons or any substance or class of substances from all or any of the requirements or prohibitions imposed by regs 4(5), 5(4), 6, 7, 8(2), 9(2)-(4), 10(2)-(6) and 11(4), (5) and (7), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 13(1). The Executive may not, however, grant any such exemption unless having regard to the circumstances of the case, and, in particular, to (1) the conditions, if any, which it proposes to attach to the exemption; (2) any requirements imposed by or under any enactments which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 13(2).

5     'Manager' means in relation to a mine, or part thereof, the person who is appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8 as the

manager of that mine (see PARA 748): Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

6 'Risk', in relation to the exposure of a person at work to inhalable dust, means the likelihood that the potential for harm to the health of a person will be attained under the conditions of use and exposure, and also the extent of that harm: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

7 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 4(1)(a). The risk assessment must include consideration of (1) the hazardous properties of inhalable dust likely to occur in the mine; (2) the level, type and duration of exposure; (3) the circumstances of the work, including changes in the nature of the work from one shift to the next and differing shift lengths; (4) activities where there is the potential for a high level of exposure; (5) the relevant exposure control limits; (6) the effect of preventive and control measures which have been or will be taken in accordance with reg 5 (see the text and notes 13-18); (7) the results of relevant health surveillance; (8) the results of any relevant sampling of exposure; and (9) such additional information as the manager may need in order to complete the risk assessment: reg 4(2). 'Risk assessment' means the assessment of risk required by reg 4(1)(a): reg 2. 'Hazard', in relation to inhalable dust, means the intrinsic property of that substance which has the potential to cause harm to the health of a person by inhalation, and 'hazardous' is to be construed accordingly; 'health surveillance' means assessment of the state of health of an employee, as related to exposure to inhalable dust: reg 2.

8 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 4(1)(b).

9 In accordance with the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 8: see the text and notes 27-29.

10 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 4(3).

11 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 4(4).

12 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 4(5).

13 In the requirements of the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10: see the text and notes 40-50.

14 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5(1). As to what is reasonably practicable see PARA 417.

15 'Respiratory protective equipment' means all such equipment which is intended to be worn or held by a person at work and which protects that person against risks to his health from inhalation of harmful substances, and any addition or accessory designed to meet that objective: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2. Respiratory protective equipment provided by an employer in accordance with reg 5 must be suitable for the purpose and must (1) comply with any provision in the Personal Protective Equipment Regulations 2002, SI 2002/1144 (see PARAS 567-568); or (2) where no such provision applies, be of a type approved or conform to a standard approved, in either case, by the Health and Safety Executive: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5(5). 'Employer' includes the owner if he employs persons at work at the mine: reg 2. As to the meaning of 'owner' see PARA 395 note 5; definition applied by reg 2. 'Approved' means approved for the time being in writing: reg 2.

16 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5(2).

17 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5(3).

18 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5(4).

19 'Control measure' means a measure taken to reduce exposure to inhalable dust (including the provision of systems of work and supervision and the provision and use of engineering controls and respiratory protective equipment): Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

20 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 6(1).

21 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 6(2).

22 In the requirements of the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5.

23 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 7(1).

24 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 7(2).

- 25 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 7(3).
- 26 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 7(4).
- 27 'Respirable dust' means airborne material which is capable of penetrating to the gas exchange area of the lung, as defined by BS EN 481 1993: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 28 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 8(1). The sampling scheme must specify (1) the method by which samples are to be taken; (2) the persons who are to be sampled; (3) the locations at which samples are to be taken; (4) the frequency with which samples are to be taken; and (5) the type of sampling instrument which is to be used: reg 8(2). Every sample taken under the sampling scheme must be so taken as to be representative of the general body of the air in the vicinity of the persons in relation to whom it is taken throughout a working shift below ground: reg 8(3).
- 29 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 8(4).
- 30 'Respirable dust content' means, in relation to a sample of air, the average weight in milligrammes of the respirable dust found to be present in each cubic metre of the air sampled: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 31 'Quartz content' means, in relation to a sample of air, such portion of the respirable dust content of that sample as is attributable to respirable dust consisting of crystalline silica: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 32 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 9(1).
- 33 As to exposure control limits see notes 40-41.
- 34 'Working day' does not include a Saturday, Sunday or day of public or colliery holiday: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 35 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 9(2).
- 36 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 9(3).
- 37 'Covered accommodation' means the covered accommodation provided in pursuance of the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36 (see PARA 752): Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 38 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 9(4).
- 39 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 9(5).
- 40 'Exposure control limit for respirable dust' means the exposure control limit approved from time to time by the Health and Safety Executive for respirable dust in relation to the specified reference period when calculated by a method approved by the Executive: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2 (definition amended by SI 2008/960). The exposure control limits for respirable dust and for quartz (see note 41) which the Health and Safety Commission approved and which were in force at the time of the coming into force of the regulations (ie 1 October 2007: see reg 1) are available in the approved code of practice and guidance for the regulations.
- 41 'Exposure control limit for quartz' means the exposure control limit approved from time to time by the Health and Safety Executive for quartz in relation to the specified reference period when calculated by a method approved by the Executive: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2 (definition amended by SI 2008/960). See also note 40.
- 42 'Relevant operations' means work which produces inhalable dust: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.
- 43 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(1).
- 44 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(2).
- 45 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(3).
- 46 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(4).

47 le in accordance with the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(1)(d)(ii),(2)(a) or (4).

48 This must include (1) details of any change in the method of work or in the control measures; and (2) an assessment of the effect of these changes: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(5)(b)(i), (ii).

49 If the mine owner has not received a reply from the Executive within seven working days of submitting his justification to resume relevant operations in accordance with the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(5)(b) then he may resume relevant operations without the consent required by reg 10(5)(c): reg 10(6).

50 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 10(5).

51 'Doctor' means a registered medical practitioner competent in occupational health: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

52 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 11(1). Health surveillance arranged by an employer in order to comply with this duty must be at the cost of that employer and must take place during the working hours of the employee or at a time agreed with the employee: reg 11(4). An employee who is the subject of health surveillance must furnish the doctor with such information concerning his health as the doctor may reasonably require: reg 11(5).

53 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 11(2). The employer must (1) on reasonable notice being given, allow an employee access to his personal health record; (2) provide the Executive with copies of such health records as the Executive may require; and (3) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all health records kept by him: reg 11(3).

54 le any measure taken to comply with the Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 5: see the text and notes 13-18.

55 'Medical examination' includes any laboratory tests and X-rays that a doctor may require: Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 2.

56 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 11(6).

57 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 11(7).

58 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 12(1). Without prejudice to the generality of reg 12(1), the information, instruction and training provided under that paragraph must include (1) the risk which exposure to inhalable dust presents to health; (2) the relevant exposure control limits; (3) the significant findings of the risk assessment; (4) the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other employees at the workplace; (5) if the exposure control limit for respirable dust or the exposure control limit for quartz is exceeded, provision forthwith of all relevant sampling results to the employee or his representative; and (6) the collective results of any health surveillance undertaken in accordance with reg 11 (see the text and notes 52-53) in a form calculated to prevent those results from being identified as relating to a particular person: reg 12(2).

59 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 12(3).

60 Coal Mines (Control of Inhalable Dust) Regulations 2007, SI 2007/1894, reg 12(4).

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### **797. Firedamp drainage in coal mines.**

At coal mines, regulations<sup>1</sup> make provision as to the process, known as 'firedamp drainage', of collecting firedamp<sup>2</sup> in the mine before it has been diluted by any ventilation and its safe disposal<sup>3</sup>. Requirements are imposed in respect of firedamp drainage systems<sup>4</sup>, as to the drilling of boreholes<sup>5</sup> for tapping firedamp<sup>6</sup> and the facilities to be provided at each borehole for measuring the percentage of inflammable gas in the gas flow<sup>7</sup>; the insertion, sealing and methods of connection of stand pipes in boreholes<sup>8</sup>; the design, construction, installation, colouring and methods of connection of pipe ranges<sup>9</sup>; the colouring of valves<sup>10</sup>; the design, construction, installation and earthing of exhausters<sup>11</sup>; the housing of surface exhausters and precautions to be taken at exhauster houses, calorimeter rooms<sup>12</sup> and discharge points<sup>13</sup>; and the supervision by competent persons of exhausters and pressure control chambers<sup>14</sup>. An authorised inspector<sup>15</sup> may by notice to the manager exempt<sup>16</sup> any mine or part from the application of any of these provisions if he is satisfied that the safety of employees at the mine will not be prejudiced thereby<sup>17</sup>.

1    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015. These regulations apply to every mine of coal (reg 3) and were made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2 (1) (a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

2    'Firedamp' means any inflammable mixture of gases, or any inflammable gas, naturally occurring in a mine: Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 2(1). As to the meaning of 'gas' see PARA 789 note 5.

3    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, regs 2(1), 3.

4    'Firedamp drainage system' includes any system of firedamp drainage other than one which consists merely of a pipe placed in a roadside pack for collecting firedamp which has accumulated behind the pack and conveying it to a point in the road where it can be discharged safely: Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 2(1).

5    'Borehole' means a hole required for tapping firedamp and draining it through any firedamp drainage system: Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, regs 2(1), 5(1).

6    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 5.

7    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 6.

8    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 7.

9    See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, regs 8, 9.

10   See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 10.

11   See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 11.

12   See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 12 (amended by SI 1989/635).

13   See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 13.

14   See the Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 14.

- 15 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 16 As to exemptions generally see PARA 425.
- 17 Coal Mines (Firedamp Drainage) Regulations 1960, SI 1960/1015, reg 4.

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## **(v) Lighting, Lamps, Smoking Materials etc**

### **798. Lighting.**

It is the duty of the manager<sup>1</sup> of every mine<sup>2</sup> to secure the provision of suitable and sufficient natural or artificial lighting in all parts of the mine above ground in or through which persons work or pass, having regard to the amount of light emitted by lamps normally carried by persons who work in or pass through such parts<sup>3</sup>, and also to secure the provision of suitable and sufficient artificial lighting in all parts below ground in or through which persons work or pass, other than a part in which such lighting is inadvisable for safety reasons or is unnecessary because of the light emitted by lamps normally carried by persons who work in or pass through that place or for any other reason<sup>4</sup>. The manager must also ensure that all apparatus for producing artificial lighting at the mine is properly maintained<sup>5</sup>.

Regulations may prescribe particular places at which prescribed lights are to be provided and maintained, but no such provision is in derogation of the requirements describe above<sup>6</sup>. At mines of coal, stratified ironstone, shale or fireclay, such prescribed places below ground, subject to certain exceptions<sup>7</sup>, are (1) regularly used entrances to shafts<sup>8</sup> or outlets and sidings relating to them<sup>9</sup>; (2) the top and bottom of every incline on which vehicles are moved by gravity operated rope haulage apparatus<sup>10</sup> other than apparatus which is advanced with the working of a face<sup>11</sup>; (3) every siding, landing, passbye, junction and off-take, every place where vehicles are regularly coupled or uncoupled to or from other vehicles or a haulage rope and every place where vehicles are regularly filled mechanically<sup>12</sup>; and (4) every room or place housing an engine or motor<sup>13</sup>. The general lighting provided pursuant to these requirements must be so arranged as to minimise glare or eyestrain<sup>14</sup>. At such mines, every person who works at a place below ground at which there is general lighting must be provided with a portable lamp for emergency use and must have that lamp with him whenever he is at that place<sup>15</sup>. At every place below ground lighted by electric lights the failure of which is likely to cause danger, a safety-lamp or other proper light must be provided and kept alight<sup>16</sup>. The roof and sides of certain places<sup>17</sup> must be kept whitened<sup>18</sup>.

At mines other than mines of coal, stratified ironstone, shale or fireclay, the prescribed places at which suitable and sufficient lighting must be provided are all entrances below ground to a shaft or outlet and the sidings relating to them which are regularly used whenever persons are working or walking there<sup>19</sup>.

1 As to the meaning of 'manager' see PARA 750 note 1.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 Mines and Quarries Act 1954 s 61(1)(a)(i).

4 Mines and Quarries Act 1954 s 61(1)(a)(ii).

5 Mines and Quarries Act 1954 s 61(1)(b). As to the meaning of 'maintained' see PARA 459 note 3.

6 Mines and Quarries Act 1954 s 61(2).

7 The excepted places are (1) any place on the intake side of, and within 45 metres of, a working face; or (2) any other place within 275 metres of a working face, if both such places are accessible from the working face,



and subject to the power of an authorised inspector (see PARA 375 note 2) to require lighting at any such place which is not within 10 metres of a working face: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(3) (amended by SI 1978/1648) (contained in the Coal and Other Mines (Safety-Lamps and Lighting) Order 1956, SI 1956/1765, Sch 1). Mines at which not more than ten persons are employed below ground are exempt and an authorised inspector may exempt any mine at which not more than 30 persons are so employed: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(4). For further powers of exemption see note 13. The Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 apply to every mine of coal, stratified ironstone, shale or fireclay (reg 1) and took effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2 (1) (a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

8 As to the meaning of 'shaft' see PARA 763 note 15.

9 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(1)(a).

10 As to the meaning of 'gravity operated rope haulage apparatus' see PARA 765 note 9.

11 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(1)(b).

12 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(1)(c).

13 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(1)(d). An authorised inspector may exempt a mine or part of a mine from any provision of reg 17, or of regs 5, 6, 21, 23, if he is satisfied that its application to it is inappropriate: reg 24; that provision also purports to provide for exemptions from reg 4, which, however, is revoked.

14 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 17(2).

15 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 21. An authorised inspector may exempt a mine or part of a mine from this provision: see note 13.

16 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 22.

17 In the places at which general lighting must be provided (see heads (1)-(4) in the text), except that places at which vehicles are filled need not be whitened where the place is within 90 metres of the working face in connection with which the place is used, and with the addition of every room or place housing any electrical transformer or switchgear: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 23 (amended by SI 1978/1648). Any such place may, however, be exempted by an authorised inspector: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 23 proviso.

18 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 23. This provision is subject to exemption by an authorised inspector: see note 13.

19 Miscellaneous Mines (General) Regulations 1956 reg 27 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

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### **799. Permitted lights.**

No lamps or lights other than permitted lights<sup>1</sup> may be allowed or used below ground in (1) any coal mine first opened on or after 1 January 1957<sup>2</sup>; (2) any mine first opened before that date in which, immediately before that date, the use of any lamps or lights other than locked safety-lamps<sup>3</sup> or other previously authorised lighting<sup>4</sup> was, or, but for any exemption, would have been, unlawful<sup>5</sup>, or in which locked safety-lamps were then being used otherwise than by way of temporary precaution<sup>6</sup>; and (3) any mine other than the foregoing (whether first opened before, on or after that date) after the occurrence of an ignition or explosion of gas<sup>7</sup> naturally present in the mine, whether or not causing death or bodily injury<sup>8</sup>, or after the use of locked safety-lamps, otherwise than as a temporary precaution, is introduced in any part of the mine<sup>9</sup>.

If an authorised inspector<sup>10</sup> is satisfied with respect to a mine or part of a mine that, by reason of the special character of the mine or part, compliance with these provisions as to permitted lights is unnecessary, he may exempt<sup>11</sup> that mine or part from those provisions<sup>12</sup>.

Special provision is made for the use below ground of any lights in a film-lighting circuit<sup>13</sup> in a coal mine. Such a circuit must not be used unless not less than seven days prior to use details of when and where it is to be used have been notified to the Health and Safety Executive<sup>14</sup>, and within the 24 hours immediately preceding use it has been externally examined and its insulation and the conductance of every conductor of every flexible cable forming part of it have been tested<sup>15</sup>. The manager must make, and ensure the carrying out of, arrangements to prevent the accumulation of dust on any surface of any luminaire or apparatus in sufficient quantities to give rise to spontaneous ignition<sup>16</sup>. He must also make suitable<sup>17</sup> rules with respect to the use of film lighting circuits, for the purpose of ensuring, so far as is reasonably practicable<sup>18</sup>, that such use will not give rise to danger<sup>19</sup>. No person is permitted to fire any shot or round of shots in a place in which, or in the vicinity of which, any part of a film lighting circuit is installed<sup>20</sup>.

1 As to the meaning of 'permitted lights' see PARA 792 note 10.

2 Mines and Quarries Act 1954 s 62(1). 1 January 1957 was the date of commencement of that Act.

3 As to safety-lamps see PARA 800.

4 I.e lighting authorised by or under repealed enactments.

5 Mines and Quarries Act 1954 s 62(2)(a).

6 Mines and Quarries Act 1954 s 62(2)(b). References to the use of safety-lamps by way of temporary precaution must be construed, in relation to a mine, as references to the occasional or intermittent use of locked safety-lamps by workmen employed below ground in a place in which the use of naked lights might be dangerous and, in relation to part of a mine, as references to the occasional or intermittent use of locked safety-lamps by workmen employed in that part in such a place: s 182(4).

7 As to the meaning of 'gas' see PARA 789 note 5.

8 Mines and Quarries Act 1954 s 62(3)(a).

9 Mines and Quarries Act 1954 s 62(3)(b). Provisions formerly had effect enabling an inspector to require the discontinuance of the presence or use of lamps or lights other than permitted lights (s 62(3)(c), (4)), but those provisions were repealed in consequence of the coming into operation of the Health and Safety at Work etc Act

1974: see the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1975, SI 1975/1102, reg 3, Sch 1. This did not, however, affect the validity of anything done under the repealed provisions: reg 3.

10 As to the meaning of 'authorised inspector' see PARA 375 note 2.

11 As to the variation or revocation of approvals, consents, exemptions etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

12 Mines and Quarries Act 1954 s 62(5).

13 'Film lighting circuit' means any electric circuit in a coal mine, not being permanently installed thereat, and required occasionally to supply mains electricity to electric lights for the purpose of providing illumination for photography or video-recording, and includes those lights and any other electrical apparatus in that circuit: Electricity at Work Regulations 1989, SI 1989/635, reg 17(1), Sch 1 para 1.

14 Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 2(a).

15 Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 2(b).

16 Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 3.

17 The rules in particular must require continuous testing for firedamp when a film lighting circuit is in use, and the operation of the circuit to be personally supervised by a competent person: Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 4(a), (b). 'Firedamp' means any flammable gas or any flammable mixture of gases occurring naturally in a mine: reg 2(1). As to the meaning of 'competent person' see PARA 748 note 7.

18 As to the meaning of 'reasonably practicable' see PARA 417.

19 Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 4.

20 Electricity at Work Regulations 1989, SI 1989/635, Sch 1 para 5.

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### **800. Safety-lamps and lighting at coal, etc mines.**

At mines of coal, stratified ironstone, shale or fireclay, the manager of a mine in which or in part of which the use of permitted lights<sup>1</sup> only is lawful must make, and ensure the efficient carrying out of, arrangements for the examination before and after use of all safety-lamps and firedamp detectors<sup>2</sup> so that no such lamp or detector is taken below ground unless it has been thoroughly examined and found to be in safe working order and is securely locked<sup>3</sup>. In a safety-lamp mine<sup>4</sup> every safety-lamp being taken below ground must also be examined by a supervisor or an inspector<sup>5</sup> or other competent person appointed by the manager<sup>6</sup> before or as soon as practicable after it is taken into the mine to ascertain that it is in safe working order and properly locked<sup>7</sup>, and similar arrangements must be made with regard to a safety-lamp part of a mine<sup>8</sup>.

At such mines, safety-lamps for the personal use of haulage men must be electric cap lamps<sup>9</sup>. Any electric safety-lamps must be of a type approved for the purpose of remaining energised in a mine in which firedamp in a concentration exceeding 1.25 per cent by volume in the general body of air below ground is detected<sup>10</sup>, or a type otherwise approved<sup>11</sup> and it is the duty of the mine manager to make and ensure the efficient carrying out of arrangements for maintaining the specified lighting performance<sup>12</sup> of safety-lamps<sup>13</sup>. Persons to whom locked safety-lamps are issued must examine them before going below ground, and periodically thereafter, to ensure that they are in safe working order and locked<sup>14</sup>. In a safety-lamp mine or safety-lamp part of a mine the unlocking of, or possession of any contrivance for unlocking, any safety-lamp or firedamp detector is prohibited<sup>15</sup>. Safety-lamps or firedamp detectors must not be placed on their bottoms in the mine except where necessary or authorised by the manager, and no person may swing a tool within 600 mm of any safety-lamp other than his own cap lamp<sup>16</sup>. If a safety-lamp is damaged the user must forthwith carefully extinguish the light<sup>17</sup>, and every person to whom a safety-lamp or firedamp detector is issued<sup>18</sup> must return it to the lamp room at the end of his shift<sup>19</sup>.

In safety-lamp mines and safety-lamp parts of mines the relighting of flame safety-lamps underground is forbidden except as authorised by regulations which prescribe by whom, and the manner and place in which, the relighting may be carried out<sup>20</sup>.

Certain specified types of electric lighting apparatus are authorised for use in mines or parts of mines in which the use of permitted lights only is lawful; accordingly, such lights are permitted lights<sup>21</sup>. There must be observance of the regulations governing the use of electricity in such mines<sup>22</sup>.

1 As to the meaning of 'permitted lights' see PARA 792 note 10. As to such lights see PARA 799.

2 'Detectors' means appliances, whether or not safety-lamps, for detecting the presence of inflammable gas: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 2(1) (contained in the Coal and Other Mines (Safety-Lamps and Lighting) Order 1956, SI 1956/1765, Sch 1). As to the provision and use of such detectors see PARA 792. As to the application and continuance in force of the regulations see PARA 798 note 7.

3 See the Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 2.

4 'Safety-lamp mine' means a mine in no part of which below ground is the use of lamps or lights other than permitted lights lawful: Mines and Quarries Act 1954 s 182(1).

5 le a supervisor appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2)(a) (see PARA 748) or an inspector appointed under reg 12(1) (see PARA 753).

6 As to such persons and their appointment see PARA 750.

7 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 3(1) (amended by SI 1993/1897).

8 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 3(2). 'Safety-lamp part of a mine' means a part of a mine other than a safety-lamp mine being a part below ground in which either the use of lamps or lights other than permitted lights is unlawful or safety-lamps are for the time being in use by way of temporary precaution (see PARA 799 note 6): Mines and Quarries Act 1954 s 182(1).

9 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 5. As to exemptions see PARA 798 note 13.

10 Electricity at Work Regulations 1989, SI 1989/635, regs 20(1), 21(1).

11 le approved pursuant to the Mines and Quarries Act 1954 s 64(2) (see PARA 802 text and notes 5-7): Electricity at Work Regulations 1989, SI 1989/635, reg 21(1).

12 le the performance specified in the approval relating to the lamp: Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 6.

13 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 6. As to exemptions see PARA 798 note 13.

14 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 7.

15 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 8.

16 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 9 (amended by SI 1978/1648).

17 Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 10.

18 Except with the written permission of the manager a person in charge of a detector which is a flame safety-lamp must not use any other lamp as his working light: Coal and Other Mines (Ventilation) Regulations 1956 reg 15(1) (contained in the Coal and Other Mines (Ventilation) Order 1956, SI 1956/1764, Sch 1). See also PARA 792.

19 Coal-and Other Mines (Safety-Lamps and Lighting) Regulations 1956 reg 11.

20 See the Coal and Other Mines (Safety-Lamps and Lighting) Regulations 1956 regs 12-16 (reg 15 amended by SI 1993/1897).

21 These are lights which conform with the requirements of the Electricity at Work Regulations 1989, SI 1989/635, reg 19(2), in relation to safety-lamp mines containing zones in which firedamp is likely to occur in a quantity sufficient to indicate danger. These requirements are that the equipment should be (1) equipment of a kind approved for the purpose; (2) equipment approved pursuant to reg 20(1) (see the text and note 10); (3) equipment the use of which was lawful in such zones immediately before the coming into force of the regulations; (4) equipment which has received a certificate of conformity or a certificate of inspection in accordance with EC Council Directive 82/130 (OJ L059, 02.03.1982, p 10), on the approximation of the laws concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp as adapted to technical progress by EC Commission Directives 88/35, 91/269, 94/44 and 98/65; (5) equipment which was, before the coming into force of the Electricity at Work Regulations 1989, SI 1989/635, approved pursuant to the Coal and Other Mines (Electricity) Regulations 1956 regs 20, 21A (revoked) (contained in SI 1956/1766); (6) equipment that is not capable of producing incandescence electrical sparks in normal use; or (7) electrically-powered equipment not permanently installed in the mine but required occasionally for monitoring, testing, recording and measurement, and used where the concentration of firedamp is 0.8% by volume or less in accordance with suitable rules drawn up by the manager to ensure that danger will not thereby arise, which rules must in particular include provision for personal supervision of that equipment by a competent person and testing for firedamp when it is in use: Electricity at Work Regulations 1989, SI 1989/635, reg 19(2)(a)-(g) (amended by SI 1996/192 and SI 1999/2550). For these purposes, 'safety-lamp mine' means (a) any coal mine; or (b) any other mine in which there has occurred below ground an ignition of firedamp or in which more than 0.25% by volume of firedamp is found on any occasion at any place below ground in the mine: Electricity at Work Regulations 1989, SI 1989/635, reg 2(1). As to the meaning of 'firedamp' see PARA 799 note 17.

22 These requirements for the installation of electric power in coal and other mines are prescribed by the Electricity at Work Regulations 1989, SI 1989/635, regs 17-28 (reg 18 substituted by SI 1995/2005; Electricity at Work Regulations 1989, SI 1989/635, reg 19 as amended (see note 21)). The provisions of the Mines and Quarries Act 1954 s 157 (which provide a special defence to proceedings for a contravention of the provisions of the Mines and Quarries Act 1954: see PARA 878) do not apply to proceedings for a contravention of these regulations: Electricity at Work Regulations 1989, SI 1989/635, reg 28.

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### **801. Lamps and lights at other mines.**

At mines other than mines of coal, stratified ironstone, shale or fireclay, the manager of every mine in which, or in part of which, the use of lamps or lights other than permitted lights<sup>1</sup> is unlawful must make and ensure the efficient carrying out of arrangements to secure that no safety-lamp is taken below ground in that mine or part unless it has, since last used, been thoroughly examined and found to be in safe working order and unless it is securely locked<sup>2</sup>. No person employed below ground at such a mine may leave his working place without taking his portable lamp or light with him<sup>3</sup>.

1 As to the meaning of 'permitted lights' see PARA 792 note 10, and as to such lights see PARA 799.

2 Miscellaneous Mines (General) Regulations 1956 reg 28 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

3 Miscellaneous Mines (General) Regulations 1956 reg 29, which applies to all mines, other than coal, etc mines, irrespective of whether the use of permitted lights only is lawful.

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## **802. Wrongful use and misuse of safety-lamps.**

No one may take or use below ground in any mine<sup>1</sup> a safety-lamp other than one provided by the owner<sup>2</sup>, and other than one conforming to regulations<sup>3</sup> and of a type approved<sup>4</sup> by the Health and Safety Executive<sup>5</sup> for use in mines generally or in mines of that class or in that mine<sup>6</sup> and for use by all persons or persons of the class to which the person taking or using the lamp belongs<sup>7</sup>. Contravention of these provisions renders the management also guilty of an offence<sup>8</sup>.

A person who damages, destroys or loses a safety-lamp issued to him, or suffers it to be damaged, destroyed or lost, is guilty of an offence<sup>9</sup>, but in a prosecution it is a defence for him to prove that he took reasonable care of the lamp and that immediately after the occurrence of the damage, destruction or loss he notified an official of its occurrence<sup>10</sup>.

A person who tampers with such a lamp is guilty of an offence<sup>11</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 Mines and Quarries Act 1954 s 64(1). As to the meaning of 'owner' see PARA 395 note 5.

3 I.e. the Electricity at Work Regulations 1989, SI 1989/635, reg 19(2) (see PARA 800 note 21); Mines and Quarries Act 1954 s 64(2) (amended by SI 1989/635).

4 Lists of such approvals are published by the Health and Safety Executive. Approvals in force at the commencement of the Mines and Quarries Act 1954 (ie on 1 January 1957) have effect as if granted under that Act: see s 191(1)(e). Approvals in force at 1 January 1975 (ie the operative date of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, which transferred from the Secretary of State to the Health and Safety Executive the function of giving approvals) continue in force as if granted by the Executive: regs 1(1), 7(2). As to the Health and Safety Executive see PARA 361 et seq.

5 Mines and Quarries Act 1954 s 64(2) (amended by virtue of SI 1974/2013).

6 Mines and Quarries Act 1954 s 64(2)(a).

7 Mines and Quarries Act 1954 s 64(2)(b).

8 See the Mines and Quarries Act 1954 s 152(1); and PARA 877.

9 Mines and Quarries Act 1954 s 65(1). As to offences and penalties generally see PARA 852 et seq. A provision that a person is to be guilty of an offence precludes the criminal responsibility of the management (see s 152(1); and text to note 8), but not the owner's civil liability (see s 159; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 510).

10 Mines and Quarries Act 1954 s 65(1) proviso.

11 Mines and Quarries Act 1954 s 65(2).



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### **803. Smoking materials.**

Any person who takes or has in his possession below ground in a safety-lamp mine<sup>1</sup>, or takes into or has in his possession in a safety-lamp part of a mine<sup>2</sup>, any smoking materials<sup>3</sup> is guilty of an offence<sup>4</sup>.

In order to ascertain whether persons have smoking materials in their possession the manager of a safety-lamp mine or a mine which contains a safety-lamp part must make and ensure the efficient carrying out of arrangements by which all the persons employed in that mine or part, or such of them as may be selected in accordance with a system approved by an authorised inspector<sup>5</sup>, and all other persons<sup>6</sup> are, together with the articles they have with them, searched in the authorised manner<sup>7</sup> immediately before or (if that is impracticable) immediately after they go below ground in that mine or enter that part<sup>8</sup>. The manager must secure that when such arrangements are not in operation no one goes below ground in such mine or into such part<sup>9</sup>, and he may cause a person below ground in such a mine or in that part to be similarly searched at any time<sup>10</sup>.

If, when searched in accordance with these provisions, a person is found in possession of any smoking material, he is guilty of an offence<sup>11</sup>, and the contraband article may be seized and dealt with as directed by the manager<sup>12</sup>. A person who refuses to allow himself or any article which he has with him so to be searched is also guilty of an offence and, without prejudice to his prosecution, must be stopped from going into, or must be sent out of, the mine<sup>13</sup>.

The manager must ensure that at every place where such routine searching is carried out notices are posted<sup>14</sup> warning persons of their liability for taking or having smoking materials in their possession below ground, and kept so posted that they are easily seen and read by persons liable to be searched<sup>15</sup>. No person may search any other person on any occasion unless he has himself given two other persons the opportunity of searching him and he has been found not to have any smoking materials in his possession<sup>16</sup>. Every such search must be made by a person appointed in writing by the manager, called the 'searcher'<sup>17</sup>, and a search of any person employed on a shift must be made in the presence of at least two other persons so employed<sup>18</sup>. The searcher must observe the proprieties and cause the person being searched no more inconvenience than is necessary<sup>19</sup>; he must feel for any smoking materials by handling the clothing, including the inside of pockets, and, if he then has reason to suspect the presence of such materials, he must examine the clothing<sup>20</sup>, and he must also examine any article which the person being searched has with him<sup>21</sup>.

1 As to the meaning of 'safety-lamp mine' see PARA 800 note 4.

2 As to the meaning of 'safety-lamp part of a mine' see PARA 800 note 8.

3 I.e. any cigar or cigarette, any pipe or other contrivance for smoking or any match or mechanical lighter: Mines and Quarries Act 1954 s 66(1). 'Mechanical lighter' means a mechanical, chemical or electrical contrivance designed or adapted primarily for the purpose of igniting tobacco: s 66(8).

4 Mines and Quarries Act 1954 s 66(1). As to the effect of the expression 'guilty of an offence' see PARA 802 note 9. The prohibition is absolute so that it is unnecessary to show that the accused had been searched or that he had been properly searched: *Jones v Lewis* [1917] 2 KB 117, DC. An employer is not vicariously liable for the consequences of an employee's going to a part of the mine where he has no right or duty to be and there lighting a match: *Kirby v National Coal Board* 1959 SLT 7, Ct of Sess.

5 As to the meaning of 'authorised inspector' see PARA 375 note 2. As to approvals generally see PARA 802 note 4.

6 ie all persons who are not employed.

7 ie in such manner as may be specified in an order made by the Secretary of State: Mines and Quarries Act 1954 s 66(8). See the text and notes 17-21.

8 Mines and Quarries Act 1954 s 66(2)(a).

9 Mines and Quarries Act 1954 s 66(2)(b).

10 Mines and Quarries Act 1954 s 66(2).

11 Mines and Quarries Act 1954 s 66(3). See also PARA 802 note 9.

12 Mines and Quarries Act 1954 s 66(4).

13 Mines and Quarries Act 1954 s 66(6).

14 As to the posting of notices see PARA 774 note 21; and see also PARA 752.

15 Mines and Quarries Act 1954 s 66(7).

16 Mines and Quarries Act 1954 s 66(5).

17 Mines (Manner of Search for Smoking Materials) Order 1956, SI 1956/2016, art 1(a).

18 Mines (Manner of Search for Smoking Materials) Order 1956, SI 1956/2016, art 1(b).

19 Mines (Manner of Search for Smoking Materials) Order 1956, SI 1956/2016, art 1(c).

20 Mines (Manner of Search for Smoking Materials) Order 1956, SI 1956/2016, art 1(d)(i).

21 Mines (Manner of Search for Smoking Materials) Order 1956, SI 1956/2016, art 1(d)(ii).

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#### **804. Prohibition of articles producing flames or sparks.**

No article designed or adapted to produce an unprotected flame or spark may be taken or used below ground in a safety-lamp mine<sup>1</sup> or safety-lamp part of a mine<sup>2</sup>, except an article so taken or used in accordance with statutory provisions<sup>3</sup>, an article authorised by order of the Secretary of State<sup>4</sup> to be used in a mine of that class<sup>5</sup> or any article authorised in writing by an authorised inspector<sup>6</sup> to be used in that mine or that part of the mine<sup>7</sup>.

1 As to the meaning of 'safety-lamp mine' see PARA 800 note 4.

2 Mines and Quarries Act 1954 s 67(1). As to the meaning of 'safety-lamp part of a mine' see PARA 800 note 8.

3 Mines and Quarries Act 1954 s 67(2)(a). The provisions referred to are those of the Act or of regulations made or having effect as if made under it: s 67(2)(a).

4 As to the Secretary of State see PARA 360.

5 Mines and Quarries Act 1954 s 67(2)(b).

6 As to the meaning of 'authorised inspector' see PARA 375 note 2. As to the variation or revocation of approvals, consents, authorisations etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

7 Mines and Quarries Act 1954 s 67(2)(c).

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## **(vi) Materials, Machinery and Apparatus**

### ***A. ELECTRICITY AND ELECTRICAL APPARATUS***

#### **805. Electricity and electrical apparatus at coal, etc mines.**

Before electrical equipment, other than approved equipment<sup>1</sup>, is first introduced into any underground part of a safety-lamp mine<sup>2</sup>, the manager must submit to an inspector<sup>3</sup> a copy of the plan required to be kept for that part<sup>4</sup> on which the intended locations of that equipment must be shown together with a copy of any schematic diagram relating to that part prepared for the statutory purposes<sup>5</sup>.

A suitable plan must be prepared identifying any zones below ground in a safety-lamp mine in which firedamp (whether or not normally present) is likely to occur in a quantity sufficient to indicate danger<sup>6</sup>. Electrical equipment must not be energised in any such zone unless it is of a specified type<sup>7</sup>.

Where any person at a mine detects firedamp in a concentration exceeding 1.25 per cent by volume in the general body of the air either below ground at that mine or in any place on the surface at the mine where any exhaustor in a firedamp drainage system is installed, firedamp is monitored or its heat content measured, he must (1) forthwith cut off the supply of electricity to any electrical equipment situated at the place where the concentration was detected<sup>8</sup>; or (2) (where this is not possible) take all reasonably practicable steps to make such equipment safe<sup>9</sup>; or (3) (if the taking of the measures specified above does not fall in the scope of his normal duties) report the matter to an official of the mine who must ensure that those measures are taken<sup>10</sup>. If the supply of electricity to electrical equipment is cut off or the equipment made safe in accordance with this duty, it must remain in that condition until the senior official on duty at the mine, having determined that it is safe to do so, directs that such precautions are no longer necessary<sup>11</sup>; and details of the time, duration and location must be recorded<sup>12</sup>.

With certain exceptions<sup>13</sup>, no electric safety-lamp, gas detector, telephone or signalling equipment or other equipment associated therewith or required for the safety of persons may be taken or used below ground at any safety-lamp mine unless it is approved<sup>14</sup> equipment<sup>15</sup>.

At every mine at which electrical equipment which may give rise to danger is installed below ground and is supplied from a power source at the surface of the mine, switchgear must be provided at the surface for cutting off the supply of current to that equipment, and adequate provision must be made for the operation of that switchgear, including such means of communication as will, so far as is reasonably practicable, enable the switchgear to be operated in case of danger<sup>16</sup>.

Electrical equipment using oil as a means of cooling, insulation or arc suppression must not be introduced below ground at a mine<sup>17</sup>.

Suitable schematic diagrams of all electrical distribution systems intended to be operated at the mine (other than those operating at a voltage not exceeding 250 volts) must, so far as is reasonably practicable, be prepared and kept in the office at the mine, and show the planned settings of any circuit electrical protective devices<sup>18</sup>. Copies of such portions of these schematic

diagrams as are necessary to prevent danger and which show at least those parts of the electrical system which are served by switchgear operating at a voltage in excess of 250 volts must be displayed at each place where that switchgear is installed<sup>19</sup>.

Plans on a suitable scale must be kept in the office at the mine showing, so far as is reasonably practicable, the position of all permanently installed electrical equipment at the mine supplied at a voltage in excess of 250 volts<sup>20</sup>.

Where, at any place at a mine, electric arc welding is taking place or electrical energy is being generated, transformed or used at a nominal voltage in excess of 125 volts ac or 250 volts dc, a notice must be displayed in a form which can be easily read and understood and containing information on the appropriate first aid treatment for electric shock and details of the emergency action to be taken in the event of electric shock<sup>21</sup>.

At any mine in which electrical storage batteries are used below ground, those batteries must, so far as is reasonably practicable, be used, stored, charged and transferred in a safe manner<sup>22</sup>.

No locomotive or vehicle which partly or wholly uses an electrical storage battery as a power source for traction purposes may be introduced below ground unless it is an approved locomotive or vehicle<sup>23</sup>.

Exemption may be granted by written certificate of the Health and Safety Executive from the provisions set out above<sup>24</sup>. The regulations are supported by an approved code of practice relating to the use of electricity in mines<sup>25</sup>.

1     le other than equipment approved for the purposes of the Electricity at Work Regulations 1989, SI 1989/635, reg 20(1): see PARA 800 text and note 10. As to the meaning of 'electrical equipment' see PARA 605 note 9.

2     As to the meaning of 'safety-lamp mine' for these purposes see PARA 800 note 21.

3     As to the manager see PARA 750; and as to the meaning of 'inspector' see PARA 375 note 2.

4     le a plan as required to be kept for that part by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 29: see PARA 755.

5     Electricity at Work Regulations 1989, SI 1989/635, reg 18 (substituted by SI 1995/2005). Schematic diagrams are required by the Electricity at Work Regulations 1989, SI 1989/635, reg 24(1): see the text to note 17.

6     Electricity at Work Regulations 1989, SI 1989/635, reg 19(1). As to the meaning of 'danger' see PARA 606 note 3.

7     The types are those specified in the Electricity at Work Regulations 1989, SI 1989/635, reg 19(2): see PARA 800 note 21.

8     Electricity at Work Regulations 1989, SI 1989/635, reg 20(1)(a). The provisions of reg 20(1)(a)-(c) do not apply if the electrical equipment is approved for the purpose of remaining energised in such circumstances or (in the case of a safety-lamp mine) is electrical equipment such as is specified in reg 21(2) (see note 12): reg 20(1) proviso.

9     Electricity at Work Regulations 1989, SI 1989/635, reg 20(1)(b); and see note 8. As to the meaning of 'practicable' and 'reasonably practicable' see PARA 417.

10    Electricity at Work Regulations 1989, SI 1989/635, reg 20(1)(c); and see note 8.

11    Electricity at Work Regulations 1989, SI 1989/635, reg 20(2).

12    Electricity at Work Regulations 1989, SI 1989/635, reg 20(3).

13    Nothing in the 1989 regulations prevents the taking or the use below ground or at any safety-lamp mine of any electrical equipment which was, before 1 April 1990 (the date of the coming into force of the Electricity at Work Regulations 1989, SI 1989/635: see reg 1), approved pursuant to the Coal and Other Mines (Electricity)

Regulations 1956 (contained in the Coal and Other Mines (Electricity) Order 1956, SI 1956/1766) regs 20, 21A (revoked): Electricity at Work Regulations 1989, SI 1989/635, reg 21(2).

14 The equipment which has been approved pursuant to the Electricity at Work Regulations 1989, SI 1989/635, reg 20(1) (see the text and notes 8-10), or in the case of electric safety-lamps is of a type approved for the time being pursuant to the Mines and Quarries Act 1954 s 64(2) (see PARA 802).

15 Electricity at Work Regulations 1989, SI 1989/635, reg 21(1).

16 Electricity at Work Regulations 1989, SI 1989/635, reg 22.

17 Electricity at Work Regulations 1989, SI 1989/635, reg 23.

18 Electricity at Work Regulations 1989, SI 1989/635, reg 24(1). As to the meaning of 'system' see PARA 605 note 9.

19 Electricity at Work Regulations 1989, SI 1989/635, reg 24(2).

20 Electricity at Work Regulations 1989, SI 1989/635, reg 24(3).

21 Electricity at Work Regulations 1989, SI 1989/635, reg 25. It is a defence for proceedings under reg 25 (by way of contrast with the position in respect of regs 18-24, 26, 27: see reg 28) for any person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 29.

22 Electricity at Work Regulations 1989, SI 1989/635, reg 27.

23 Electricity at Work Regulations 1989, SI 1989/635, reg 26.

24 Electricity at Work Regulations 1989, SI 1989/635, reg 30(1). The exemption may be of any person, any premises, any electrical equipment, any electrical system, any electrical process, or any activity, or any class of the foregoing, from any requirement or prohibition of the 1989 regulations. Such an exemption may be subject to conditions, and to a limit of time, and may be revoked by a further written certificate at any time: reg 30(1). The Health and Safety Executive must not grant any such exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and any other requirements imposed by or under any other enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 30(2). As to the Health and Safety Executive see PARA 361 et seq.

25 As to codes of practice approved by the Health and Safety Executive see PARA 426.

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## **B. SHOTFIRING**

### **806. Appointment of shotfirers and trainee shotfirers.**

The manager<sup>1</sup> of a safety lamp mine<sup>2</sup> must appoint<sup>3</sup> a sufficient number of suitably qualified<sup>4</sup> and competent persons to carry out shotfiring operations<sup>5</sup>. He may appoint such number of persons as he considers appropriate to undergo training in shotfiring operations under the close personal supervision of a shotfirer<sup>6</sup>.

No person's wages may depend upon the number of shots fired by him or the amount of mineral obtained by shots fired by him<sup>7</sup>.

1 'Manager' means the manager of a safety-lamp mine (see note 2); any duty imposed on, and any power given to, such a person extends only to the safety-lamp mine of which he is the manager: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

2 'Safety-lamp mine' means (1) any coal mine; or (2) any other mine in which there has occurred below ground an ignition of firedamp, or more than 0.25% by volume of firedamp has been found on any occasion at any place below ground in the mine: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1). 'Firedamp' means any flammable gas or flammable mixture of gases occurring naturally in a mine: reg 2(1). The regulations apply only to safety-lamp mines: reg 3. Nothing in Pts II-V (regs 4-34) applies to explosives or detonators taken into a mine as part of an approved barrier (ie an appliance intended to prevent the extension of flame, and which contains explosives or detonators): reg 35(1), (3). 'Approved' means approved in writing for the time being by the Health and Safety Executive (as to which see PARA 361 et seq) or (except in relation to qualifications: see note 4) conforming to a standard so approved: reg 2(1). Exemption may be granted by the Health and Safety Executive by certificate in writing, exempting any person, class of person, safety-lamp mine, class of safety-lamp mine, part of a safety-lamp mine, activity, class of activity, thing, or class of thing, from any requirement or prohibition imposed by the regulations; any such exemption may be granted subject to a limit of time, and may be revoked by a certificate in writing at any time: reg 39(1). No such exemption may be granted unless, having regard to the circumstances of the case, and in particular to any conditions which it proposes to attach and to any appropriate statutory requirements, the Executive is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced because of it, and that the security of explosives and detonators will not be so prejudiced: reg 39(2). Transitional provisions apply in relation to persons lawfully employed as shotfirers on 1 April 1993 (the date on which the regulations came into force): see reg 42. As to the meaning of 'detonator' see PARA 807 note 3; as to the meaning of 'explosive' see PARA 807 note 2; as to the meaning of 'shotfirer' see note 6.

3 'Appoint' means appoint in writing with a written statement summarising the authority and responsibilities of any person in respect of whom that word is used, and 'appointed' and 'appointment' must be construed accordingly: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

4 A person is suitably qualified only if (1) he holds the qualifications for that post approved by the Health and Safety Executive; or (2) where no qualifications have been so approved, he is suitably qualified by way of education, knowledge and experience to undertake the duties of that post effectively: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 4(4) (amended by SI 2006/1031).

5 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 4(1). 'Shotfiring operations' includes (1) priming a cartridge; (2) charging and stemming a shothole; (3) linking or connecting the detonator wires in a round of shot; (4) coupling a shotfiring circuit to a detonator circuit, circuit tester or exploder; (5) testing a shotfiring circuit; and (6) firing a shot or round of shots (reg 2(2)(c)); 'shothole' means a bored hole which is to be charged with explosives for blasting purposes (reg 2(1)). As to the meanings of 'explosive', 'detonator' and 'exploder' see PARA 807 notes 2-4.

6 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 4(2). A 'shotfirer' is a person appointed under reg 4(1); and a 'trainee shotfirer' is a person appointed under reg 4(2). The manager

must ensure that a record is kept of every appointment effected under reg 4(1) or (2): reg 4(3). This must be kept for the period that the person to whom it relates is employed at the mine, and for five years thereafter: reg 36(1). In any proceedings for an offence under reg 4(3) or reg 36 it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37. As to offences and penalties generally see PARA 852 et seq.

7 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 4(5).



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### **807. Materials and equipment for shotfiring.**

The manager of a safety-lamp mine<sup>1</sup> must ensure that no explosives<sup>2</sup>, detonators<sup>3</sup>, exploders<sup>4</sup>, exploder test apparatus, circuit testers or shotfiring cable are provided for use unless they are safe for use and (except in the case of shotfiring cable) are of an approved type<sup>5</sup>.

No person may (1) issue or use any material in connection with shotfiring operations<sup>6</sup>; or (2) use any vehicle, carriage<sup>7</sup> or container<sup>8</sup> to keep or carry explosives, detonators or primed cartridges<sup>9</sup>, unless it has been provided by the owner<sup>10</sup> or manager of the mine concerned and is suitable for the purpose<sup>11</sup>. Any equipment provided for use in shotfiring operations must be properly maintained<sup>12</sup>, and stored when not in use<sup>13</sup>. The manager must ensure that each exploder available for use is thoroughly cleaned, overhauled and tested at appropriate intervals to ensure safety<sup>14</sup>, and is not issued for use unless the most recent of these tests has proved it to be satisfactory<sup>15</sup>. A record must be made each time an exploder is overhauled or tested<sup>16</sup>.

The manager must ensure that the issue, use and return of explosives, detonators and exploders is properly controlled; and that a record is made each time explosives, detonators or exploders are issued, used or returned<sup>17</sup>.

No person may tamper with any explosive, detonator, exploder or circuit tester<sup>18</sup>. If a shotfirer considers an exploder to be defective, he must withdraw it from use immediately, return it to the surface for examination, and report the facts to a person appointed for the purpose<sup>19</sup>.

1 As to the meanings of 'manager' and 'safety-lamp mine' see PARA 806 notes 1-2.

2 'Explosives' means (1) any solid or liquid substance or any mixture of solid or liquid substances or both (except when confined within an article) which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions; or (2) any article (except a detonator (as to which see note 3)) containing any substance or mixture such as is described in head (1) above: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1). For the application of the regulations, exemptions and transitional provisions see PARA 806 note 2.

3 'Detonator' means any instantaneous or delay initiator for explosives and itself containing a charge of explosives fired by means of an electric current: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

4 'Exploder' means any electrical apparatus designed and constructed for initiating detonators: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

5 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(1). As to the meaning of 'approved' see PARA 806 note 2. In any proceedings for an offence under reg 5(1), (3), (4), (5), (6) or (7) it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37. As to offences and penalties see PARA 852 et seq.

6 As to the meaning of 'shotfiring operations' see PARA 806 note 5.

7 'Carriage' means any vehicle specially constructed for carrying explosives or any skip specially constructed for carrying explosives by monorail, free-steered vehicle or other form of mine transport: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

8 'Container' means any container designed to hold explosives, detonators or primed cartridges (see note 9), but does not include a carriage: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

9 'Primed cartridge' means a cartridge of explosives into which a detonator has been inserted: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1).

10 As to the meaning of 'owner' see PARA 395 note 5.

11 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(2). Head (2) in the text does not apply to any vehicle which, within the mine concerned, is engaged in carriage by road of explosives to which the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (revoked: see now the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348) (see PARAS 555-557; and **CARRIAGE AND CARRIERS**) apply: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(10) (amended by SI 2004/568 and SI 2007/1573).

12 As to the meaning of 'maintained' see PARA 459 note 3.

13 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(3). See also note 5.

14 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(4). See also note 5.

15 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(5). See also note 5.

16 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(6). This record must be kept for three years from the date on which it was made: reg 36(2). See also note 5.

17 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(7). This record must be kept for three years from the date on which it was made: reg 36(2). See also note 5.

18 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(8).

19 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5(9).

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### **808. Safety and security of explosives and detonators.**

Each person who handles or uses explosives<sup>1</sup> or detonators<sup>2</sup> in a safety-lamp mine<sup>3</sup>, or who supervises their handling or use, must treat them with care at all times and ensure that they are kept apart until used to prime a cartridge<sup>4</sup>.

The manager must take all reasonable steps to ensure that explosives and detonators are stored, handled and used safely and securely<sup>5</sup>, and that no explosives or detonators are stored at, issued from, or returned to, any place other than an explosives store<sup>6</sup>. He may nonetheless designate such number of places as may be necessary for the temporary storage underground of explosives brought from an explosives store pending their use in connection with shotfiring operations<sup>7</sup>. He must make suitable rules for ensuring the safe and secure conduct and control of any bulk movement of explosives, and any movement of detonators to or from an explosives store<sup>8</sup>.

No person may issue explosives or detonators unless they are locked in a container<sup>9</sup> or (only in the case of explosives) locked in a carriage<sup>10</sup>. Any person who issues a container of explosives must ensure that it holds nothing more than explosives of the same composition and a check-sheet<sup>11</sup>; any person who issues a container of detonators must ensure that it holds nothing more than detonators of the same type and a check-sheet<sup>12</sup>. No person who has control of a container of explosives may place in it anything other than explosives of the same composition and a check-sheet<sup>13</sup>; and no person who has control of a container of detonators may place in it anything other than detonators of the same type and a check-sheet<sup>14</sup>. The manager must ensure that no container is issued unless it has been marked with a serial number unique to it<sup>15</sup>.

No person may issue or take control of explosives except in connection with his duties at the mine<sup>16</sup>. No person other than a shotfirer, trainee shotfirer, a person authorised in writing for the purpose by the manager<sup>17</sup>, or a person present for the purpose of examining defective or deteriorating explosives, or giving specialist technical advice about explosives, and competent to handle them, may open any container of explosives or handle any explosives<sup>18</sup>.

Any person who has been issued with a container holding explosives must keep the explosives concerned in his personal possession or under his direct control (1) until he has used them or returned those which remain to an explosives store; (2) until he has given them to a shotfirer or trainee shotfirer with a view to their being used in shotfiring operations; (3) unless he has deposited them at a place designated for the purpose by the manager<sup>19</sup>; or (4) unless he has given them to a person above ground who has been appointed by the manager to receive unused explosives pending their immediate transfer to an explosives store<sup>20</sup>.

The manager must make suitable arrangements to provide for the adequate control of any explosives left unused at the end of a shotfirer's period of duty<sup>21</sup>.

A person may not have charge of a container of detonators, nor open it, nor handle any detonator unless he is a shotfirer, trainee shotfirer, a person authorised in writing for the purpose by the manager, or a person present for the purpose of examining defective or deteriorating detonators, or giving specialist technical advice about detonators, and competent to handle them<sup>22</sup>. A person at a place other than an explosives store may not remove a detonator from a container unless it is required immediately for priming a cartridge, or for checking<sup>23</sup>. A shotfirer or trainee shotfirer who has been issued with a container of detonators must, throughout his period of duty, keep the key to the container in his personal possession,

and ensure that container and all the detonators remain in his personal possession and are kept in a securely locked box<sup>24</sup>. Every shotfirer or trainee shotfirer who, at the end of his period of duty, has not used all the detonators issued to him must return those which remain unused to an attendant at an explosives store<sup>25</sup>, or deposit them at a place designated by the manager<sup>26</sup> pending their return to an explosives store by a person entitled to handle a detonator<sup>27</sup>.

Nothing in the above provisions prevents a person who finds any explosives, detonators, or primed cartridges from taking them directly to a person competent to deal with them, or such a competent person from so receiving them<sup>28</sup>.

1 As to the meaning of 'explosives' see PARA 807 note 2.

2 As to the meaning of 'detonator' see PARA 807 note 3.

3 As to the meaning of 'safety-lamp mine' see PARA 806 note 2.

4 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 6. As to the application of the regulations, exemptions and transitional provisions see PARA 806 note 2.

5 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7(1).

6 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7(2). Notwithstanding this provision, the manager may designate such number of places (other than explosive stores) above ground as may be necessary for the temporary and secure storage of unused explosives and detonators pending their return to an explosives store following shotfiring operations: reg 7(6). 'Explosives store' means a building, enclosed area or metal structure where explosives are stored under a licence granted or registration made under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1) (definition substituted by SI 2005/1082); and see **EXPLOSIVES**. As to the meaning of 'manager' see PARA 806 note 1.

In any proceedings for an offence under the Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7(2), (4) or (5) it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37. As to offences and penalties see PARA 852 et seq.

7 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7(3). No place may be so designated unless it is suitable for the purpose, and capable of being made secure: reg 7(4). When such a place is not made secure, the manager must ensure it is supervised by an attendant: reg 7(5). As to the meaning of 'shotfiring operations' see PARA 806 note 5. See also note 6.

8 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 8(1). 'Bulk movement of explosives' means the carrying by one person of more than 10 kg of explosives or the movement of explosives by carriage: reg 8(2).

9 As to the meaning of 'container' see PARA 807 note 8.

10 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(1). As to the meaning of 'carriage' see PARA 807 note 7.

11 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(2)(a). A 'check-sheet' is a document for recording the number of shots fired: reg 9(5).

12 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(2)(b).

13 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(3)(a).

14 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(3)(b).

15 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 9(4). In any proceedings for an offence under this provision it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37.

16 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 10(1).

17 This does not prevent not more than one person from inserting into a shothole any part of a charge which is not a primed cartridge, under the close personal supervision of a shotfirer: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 22(2)(a). As to the meaning of 'shothole' see PARA 806 note 5; and as to the meaning of 'primed cartridge' see PARA 807 note 9.

18 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 10(2). As to the meanings of 'shotfirer' and 'trainee shotfirer' see PARA 806 note 6.

19 Ie under the Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7: see the text and notes 5-7.

20 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 10(3).

21 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 10(4).

22 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 11(1), (2).

23 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 11(3).

24 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 11(4). Nothing in this provision prevents the shotfirer or trainee shotfirer concerned from using the detonators in shotfiring operations: reg 11(4) proviso.

25 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 11(5).

26 Ie under the Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 7(6): see note 6.

27 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 11(6).

28 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 12.

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### **809. Shotfiring procedures.**

Every shotfirer and trainee shotfirer<sup>1</sup> in a safety-lamp mine<sup>2</sup> must take all reasonable precautions to ensure that all stages of a shotfiring operation<sup>3</sup> on which they are engaged are carried out in such a way as to ensure the safety of persons<sup>4</sup>. The manager must take all reasonable steps to identify any risks to safety present during shotfiring operations which arise out of any stray electrical currents or voltages, and (having identified them) set up a system of shotfiring which will minimise them<sup>5</sup>. He must also take all reasonable steps to identify any risks to health or safety which arise out of toxic fumes produced by shotfiring operations<sup>6</sup> and take effective measures to eliminate those risks or (where this is not practicable<sup>7</sup>) reduce them to the lowest extent reasonably practicable<sup>8</sup>.

A person may not prime or assist with priming cartridges<sup>9</sup>, nor open a container of primed cartridges<sup>10</sup>, nor handle a primed cartridge<sup>11</sup>, unless he is a shotfirer or trainee shotfirer, and must not prime cartridges unless he is satisfied that all shotholes<sup>12</sup> to be charged with the primed cartridges will be available for charging by the time that he has finished priming the cartridges, and that all the primed cartridges can be fired during his period of duty<sup>13</sup>. A person who primes a cartridge at the place where it is to be used must place it in a shothole before priming any further cartridges<sup>14</sup>. He must not prime cartridges away from the place where they are to be used unless he has been authorised in writing by the manager to do so, and he does so at a suitable priming station designated by the manager for the purpose<sup>15</sup>.

A person who primes cartridges at a priming station must carefully pack them into one or more containers<sup>16</sup> and keep any such container secure until all the primed cartridges are used<sup>17</sup>.

Immediately before charging a shothole or round of shotholes, or firing a shot or round of shots, the person who is to do the firing must make suitable tests for the presence of firedamp<sup>18</sup> and (where appropriate) an examination for general safety<sup>19</sup>. Where a shotfirer or person having immediate control of any mining operations finds or has reported to him the presence of firedamp in a concentration of, or greater than, 1.25 per cent by volume in the general body of the air he must take all reasonable steps to ensure that (1) the charging of shotholes or firing of shots ceases immediately at the place where the firedamp was found to be present in that concentration, and in any part of the return side of that place which is within the same district or part of a mine as that place; (2) the person for the time being in charge of the mine is informed forthwith; (3) if the concentration of firedamp in the air cannot be reduced below 1.25 per cent by volume, appropriate precautions are taken to prevent danger arising from any shothole, situated at the place where the firedamp was found to be present in that concentration, which has been charged but not fired<sup>20</sup>. Where, in consequence, the person in charge of the mine has the presence of firedamp reported to him he must take all reasonable steps to ensure that (a) the charging of shotholes and the firing of shots are prohibited in any part of the mine ventilated by such air as has been found to contain firedamp in a concentration of greater than 1.25 per cent by volume<sup>21</sup>; (b) any charging of shotholes or firing of shots which has ceased in consequence of head (1) above or has been prohibited under head (a) above is not resumed, or does not take place until he has satisfied himself that such resumption or taking place is safe, and has authorised it<sup>22</sup>; and (c) the circumstances are reported to the manager<sup>23</sup>.

Any person who drills a shothole must ensure that it is not placed or drilled into any charge or socket remaining from a previous shot<sup>24</sup>. A person may not charge a shothole unless it is safe to

do so<sup>25</sup>, nor may he charge a shothole as part of a delay round unless he inserts the primed cartridge first with the detonator at the back of the shothole, and unless he has allowed for suitable delay periods between the shots having regard to the circumstances of the particular case<sup>26</sup>. No person may charge a shothole or different shotholes in a round with primed cartridges which contain explosives or detonators of a different type from those used in the remainder of the charge or round<sup>27</sup>. A person responsible for charging a shothole must ensure that where necessary the back of the shothole is plugged with stemming material, the shothole is stemmed with a suitable amount of suitable stemming material, and any tool inserted into a charged shothole is made of wood or of an anti-static material<sup>28</sup>.

A person must not remove any part of a charge from a charged shothole unless he is dealing with a misfire<sup>29</sup>.

Only a shotfirer or trainee shotfirer may carry out shotfiring operations<sup>30</sup>.

The manager must ensure that each shotfiring operation is carried out by or under the supervision of a single shotfirer<sup>31</sup>.

Before a shot, or round of shots, is fired, the shotfirer who is to fire or supervise the firing must identify the danger zone<sup>32</sup>, examine all parts of it, so far as reasonably practicable<sup>33</sup>, and take all reasonable steps to ensure that (i) suitable sentries are posted, or fencing erected such as will prevent, so far as is practicable, persons from entering the danger zone; (ii) no equipment or apparatus in it is rendered dangerous by the firing of a shot; and (iii) all persons (other than himself and any trainee shotfirer who may be with him) are withdrawn from the danger zone<sup>34</sup>.

A person must not couple a shotfiring cable to a detonator circuit in a shaft or staple pit<sup>35</sup> provided with winding apparatus which is not permanent manwinding apparatus unless the kibble is conveniently placed for persons in the shaft or staple pit to enter it, and he has satisfied himself that the person operating the winding apparatus is ready to raise the kibble<sup>36</sup>.

No person may use shotfiring cable otherwise than for firing shots<sup>37</sup>. A person using any such cable must take all reasonable steps to ensure that the cable is safe for use<sup>38</sup>.

A person must not fire a shot or round of shots unless he has first taken prescribed steps<sup>39</sup>.

1 As to the meanings of 'shotfirer' and 'trainee shotfirer' see PARA 806 note 6.

2 As to the meaning of 'safety-lamp mine' see PARA 806 note 2.

3 As to the meaning of 'shotfiring operations' see PARA 806 note 5.

4 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 13. As to the application of the regulations, exemptions and transitional provisions see PARA 806 note 2.

5 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 14.

6 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 15(a).

7 As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417.

8 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 15(b). See also note 7.

9 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 16(1).

10 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 17(3)(a).

11 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 17(3)(b).

12 As to the meaning of 'shothole' see PARA 806 note 5.

13 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 16(2).

14 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 16(3).

- 15 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 17(1).
- 16 As to the meaning of 'container' see PARA 807 note 8.
- 17 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 17(2). As to the meaning of 'primed cartridge' see PARA 807 note 9. Where a shotfirer is prevented by reasons beyond his control from complying with reg 17(2)(b) (keeping the container secure), he must report the matter either to the person under whose direction he is working or to a person senior to that person, who must either carry out the duty himself or require it to be carried out by another shotfirer, in which case that other shotfirer is obliged to comply: reg 33(2). Where a trainee shotfirer is prevented by reasons beyond his control from complying with reg 17(2)(b), the duty imposed upon him must be carried out by the shotfirer under whose close personal supervision he is working: reg 33(3).
- 18 As to the meaning of 'firedamp' see PARA 806 note 2.
- 19 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 18(1). If any test for firedamp shows a concentration of or greater than 1.25% by volume (or, where the estimated delay between the first and last shot to be fired exceeds 0.1 seconds, 0.8% by volume) the person who made the test must not proceed with firing until the concentration has been reduced below that level; when it cannot be so reduced he must inform the person having immediate control of the mining operations being carried on in the part of the mine where the relevant concentration was detected of that fact, and must take appropriate precautions to prevent danger arising from any shothole which he has charged but not fired: reg 18(2).
- 20 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 19(1).
- 21 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 19(2)(a).
- 22 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 19(2)(b).
- 23 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 19(2)(c). The manager in turn must notify the Health and Safety Executive whenever the charging of shotholes or the firing of shots ceases or is prohibited in accordance with this regulation: reg 19(3). As to the Health and Safety Executive see PARA 361 et seq.
- 24 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 20(1).
- 25 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 20(2).
- 26 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 20(3).
- 27 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 20(4). As to the meanings of 'explosives' and 'detonator' see PARA 807 notes 2-3.
- 28 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 20(5).
- 29 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 21.
- 30 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 22(1). This does not, however, prevent more than one person from inserting any part of a charge which is not a primed cartridge into a shothole when he does so under the close personal supervision of a shotfirer (reg 22(2)(a)) (and see also PARA 808 text and note 17); nor does it prevent several persons from stemming shotholes, when they do so under the supervision of a shotfirer (reg 22(2)(b)).
- 31 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 22(3). In any proceedings for an offence under this regulation it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37. As to offences and penalties see PARA 852 et seq.
- 32 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 23(1)(a). 'Danger zone' means the area within which persons would be at risk were the shot or round of shots concerned to be fired (including any place into which the shot or round of shots may blow): reg 2(1).
- 33 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 23(1)(b).
- 34 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 23(1)(c). This does not prevent one other person from remaining with the shotfirer or trainee shotfirer concerned in a shaft or staple pit: reg 23(2). A person posted as a sentry must forbid all persons (except the shotfirer whose duty it was



to ensure that he was posted, and any trainee shotfirer working under that shotfirer's close personal supervision) to enter the danger zone, and must not leave his post until the particular person who posted him to it has personally directed him to do so: reg 24. No person may pass a sentry who has forbidden him entry, nor, unless he has the permission of the person firing the shot, pass a fence erected under reg 23: reg 25.

35 As to the meaning of 'shaft' see PARA 763 note 15; as to the meaning of 'staple pit' see PARA 763 note 2.

36 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 23(3).

37 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 26(1).

38 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 26(2).

39 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 27. Thus a person may not fire a shot or round of shots (1) (where transformer coupled electric detonators are not to be used) unless he has (a) checked that all the detonators concerned are connected in series; (b) connected the detonator circuit to the shotfiring cable; (c) withdrawn himself and any person with him from the danger zone; and (d) tested the circuit for continuity and electrical resistance with an ohmmeter suitable for the purpose or the exploder testing circuit; or (2) (where transformer coupled electric detonators are to be used) unless he has (a) checked that the primary looping wire has been threaded through all the toroids; (b) connected the primary looping wire to the shotfiring cable; (c) withdrawn himself and any person with him from the danger zone; and (d) checked the circuit for electrical impedance and tested the primary looping wire and the shotfiring cable for continuity with the exploder testing circuit; and (3) (in either case) unless (a) he has determined that the electrical resistance or impedance of the circuit is such as to make a misfire unlikely; and (b) it is safe to do so: reg 27(a)-(c). As to the meaning of 'exploder' see PARA 807 note 4.

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### **810. Shots, prohibited shots and misfires.**

A shotfirer or trainee shotfirer<sup>1</sup> in a safety-lamp mine<sup>2</sup> must not place the removable handle or key in position in the exploder<sup>3</sup> until he is about to use the exploder to test the circuit or to fire a shot<sup>4</sup>, and must withdraw it immediately after the operation of the exploder or an unsatisfactory test on the firing circuit<sup>5</sup>.

The manager<sup>6</sup> must give each shotfirer written notice of the maximum number of shots he may fire or have fired during his period of duty, and keep an up-to-date copy of that notice at the office of the mine<sup>7</sup>.

No person may fire a shot in the roof of any longwall working between the coal face and the waste, except (1) in accordance with suitable rules made by the manager; (2) with the authority of the person for the time being in charge of the mine; (3) for the purpose of providing access to machinery or grading through geological disturbances; and (4) where the shot is not in the waste of that longwall working and it is not foreseeable that it will break into that waste<sup>8</sup>.

A person must not fire a detonator or primed cartridge unless it forms part of a charge in a shothole<sup>9</sup>.

Where a shot or round of shots has been fired, the shotfirer who fired the shot or round or who supervised its firing must personally examine the area affected by the blast for the purpose of ensuring that it is safe for work to be resumed<sup>10</sup>. Where the safety-lamp mine is not a coal mine, the manager must ensure that a shotfirer personally examines the area affected by the blast for the purpose of ensuring that it is safe for work to be resumed<sup>11</sup>.

In the event of a misfire, the shotfirer in charge of the shot must take whatever steps are necessary to determine the cause of the misfire and to deal with it<sup>12</sup>; and must report the misfire to the manager<sup>13</sup>. The manager must investigate the circumstances of the misfire, and then ensure, so far as reasonably practicable<sup>14</sup>, that no further misfire occurs<sup>15</sup>.

No person may attempt to recover a misfired charge from a shothole by using a tool to remove the charge or the mineral directly round it, or by pulling forcibly on the detonator leads<sup>16</sup>.

A shotfirer has the further duties of ensuring that shotholes charged and all primed cartridges held by him or other persons acting under his supervision are fired before the end of his period of duty<sup>17</sup>; and of making a record, in respect of each period of duty he works, of specified matters<sup>18</sup>.

1 As to the meanings of 'shotfirer' and 'trainee shotfirer' see PARA 806 note 6.

2 As to the meaning of 'safety-lamp mine' see PARA 806 note 2.

3 As to the meaning of 'exploder' see PARA 807 note 4.

4 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 28(a). For the application of the regulations, exemptions and transitional provisions see PARA 806 note 2.

5 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 28(b).

6 As to the meaning of 'manager' see PARA 806 note 1.

7 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 29(1). The maximum number must be one which is consistent with the requirements of safety: reg 29(2). If he gives any shotfirer, who for the duration of his period of duty is also a supervisor or an inspector appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2)(a) or 12(1) (see PARAS 748, 753), written notice that that shotfirer may fire or have fired more than ten shots during that period, the manager must as soon as practicable thereafter give notice thereof to the Health and Safety Executive: Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 29(3) (amended by SI 1993/1897). As to the Health and Safety Executive see PARA 361 et seq.

8 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 30(1).

9 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 30(2). As to the meaning of 'primed cartridge' see PARA 807 note 9; and as to the meaning of 'shothole' see PARA 806 note 5.

10 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 31(1). No such examination may be made unless five minutes have elapsed where fewer than seven shots have been fired, or ten minutes where seven or more shots have been fired: reg 31(3). Regulation 33(2) (see note 17) also applies in relation to reg 31(1).

11 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 31(2). The time lapses specified in note 10 apply to this case: reg 31(3). In any proceedings for an offence under reg 31(2) it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37. As to offences and penalties see PARA 852 et seq.

12 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 32(1)(a). Regulation 33(2) (see note 17) also applies in relation to reg 32(1).

13 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 32(1)(b); and see note 12.

14 As to the meanings of 'practicable' and 'reasonably practicable' see PARA 417.

15 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 32(2).

16 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 32(3).

17 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 33(1). Where a shotfirer is prevented by reasons beyond his control from complying with this regulation, or his obligation under reg 31(1) or reg 32(1) (see the text and notes 10, 12-13) he must report the matter either to the person under whose direction he is working or to a person senior to that person, who must either carry out the duty himself or require it to be carried out by another shotfirer, in which case that other shotfirer is obliged to comply: reg 33(2).

18 Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 34. The matters specified in this regulation are (1) every shot fired by him or under his supervision, including the weight of explosives and the number of detonators used; (2) any misfire which occurred in respect of a shot intended to be fired by him or under his supervision; (3) any steps taken by him pursuant to reg 32(1)(a) (see the text and note 12); (4) any report made by him pursuant to reg 33(2) (see note 17): reg 34(a)-(d). This record must be kept for three years from the date on which it was made: reg 36(2). In any proceedings for an offence under reg 4(3) or reg 36 it is a defence for the manager concerned to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence: reg 37.

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### **811. Control of cardox and hydrox shells at coal mines.**

The maintenance, preparation for use and use of the blasting materials and devices known as cardox shells and hydrox shells<sup>1</sup> at coal mines is governed by regulations<sup>2</sup>.

Such shells must not be filled or primed with an initiator on the surface except at a place appointed by the manager and used for that purpose only and at which there are adequate means for extinguishing any fire<sup>3</sup>; and only shells of a type approved by the Health and Safety Executive<sup>4</sup> for filling and priming below ground may be so filled or primed<sup>5</sup>. Shells filled or primed at a mine must be filled or primed by or under the supervision of a competent person appointed by the manager<sup>6</sup>, and no shell filled or primed elsewhere may be taken below ground unless the filling or priming has been done under arrangements approved by an inspector<sup>7</sup>. A notice specifying the correct type of filling and initiator must be kept posted<sup>8</sup> at the place where filling and priming is done and also provided in the covered accommodation<sup>9</sup> set aside for the inspection of documents by employees<sup>10</sup>. Shells and their fillings must be periodically examined<sup>11</sup> and steps must be taken to ensure their safe conveyance in vehicles and cages<sup>12</sup>. The care and conveyance below ground of filling and priming materials are controlled<sup>13</sup> and the manager may make a scheme of transit for the conveyance of such materials in bulk<sup>14</sup>, but the total quantity below ground at any time must not be more than will be required for use during the ensuing 24 hours<sup>15</sup>. Shells may only be fired by persons appointed to do so who are, or are qualified to be, shotfirers<sup>16</sup>. Shells must not be fired otherwise than by means of electric shotfiring apparatus and cable provided by the owner and approved by the Health and Safety Executive<sup>17</sup>. Provision is made for the custody, care and use of shotfiring apparatus and cable<sup>18</sup>; the charging of shotholes<sup>19</sup> and firing of shots in accordance with a specified procedure<sup>20</sup>; and the giving of warning and taking proper shelter<sup>21</sup>. The precautions to be taken after firing<sup>22</sup> and the procedure for dealing with misfires<sup>23</sup> are laid down; and the person appointed to fire shells must keep a record in a book provided by the owner<sup>24</sup>.

An authorised inspector<sup>25</sup> may, by notice, exempt<sup>26</sup> a mine or part of a mine from any of these provisions as to cardox and hydrox shells which he considers inappropriate to that mine or part<sup>27</sup>.

1 Cardox shells and hydrox shells are not otherwise defined.

2 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 1. These regulations were made under the Mines and Quarries Act 1954 ss 69, 141, which, so far as relevant, were repealed by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: reg 7(3).

3 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 2(1), (2). Inflammable materials not required for such shells must not be kept there (reg 2(2)(a)); the place must be kept cool and dry (reg 2(2)(b)), and there must be no smoking there (reg 2(2)(c)).

4 As to the Health and Safety Executive see PARA 361 et seq.

5 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 3 (amended by virtue of SI 1974/2013).

6 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 4(1). As to competent persons generally see PARA 748 note 7.

- 7 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 4(2).
- 8 As to the posting of notices see PARA 774.
- 9 As to this accommodation see PARA 774 note 21.
- 10 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 5(1). No filling or initiator may be used other than that specified in the notice: reg 5(2).
- 11 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 6.
- 12 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 7.
- 13 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 8 (amended by SI 1993/1897).
- 14 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 9.
- 15 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 10.
- 16 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 11. As to the qualifications of shotfirers see PARA 806 note 4. As to the meaning of 'owner' see PARA 395 note 5.
- 17 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 12 (amended by virtue of SI 1974/2013).
- 18 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, regs 13-16. In particular, reg 15 provides that these provisions do not preclude the application of the Coal Mines (Explosives) Regulations 1956, SI 1956/1767, regs 21, 22; those regulations were revoked and replaced by the Coal Mines (Explosives) Regulations 1961, SI 1961/854 (now also revoked); see now the Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 5; and PARA 807.
- 19 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 17.
- 20 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, regs 18-21 (variously amended by SI 1978/1648 and SI 1993/1897, and by virtue of SI 1974/2013).
- 21 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, regs 22-24.
- 22 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 25.
- 23 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, regs 26, 27 (reg 26 amended by SI 1993/1897).
- 24 See the Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 28.
- 25 As to the meaning of 'authorised inspector' see PARA 375 note 2.
- 26 As to the variation or revocation of approvals, consents, exemptions etc see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.
- 27 Coal Mines (Cardox and Hydrox) Regulations 1956, SI 1956/1942, reg 29 (amended by virtue of SI 1974/2013).

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## **812. Shotfirers at stratified ironstone, shale or fireclay mines.**

At mines of stratified ironstone, shale or fireclay, other than a safety-lamp mine<sup>1</sup>, subject to a power of exemption<sup>2</sup>, the firing of shots by any person other than a shotfirer appointed by the manager<sup>3</sup> or, in the case of shots fired by safety fuse other than safety fuse<sup>4</sup> capped by a detonator<sup>5</sup>, by a person appointed to fire shots by fuse<sup>6</sup>, is prohibited. A shotfirer may not use a delay detonator or fire a round<sup>7</sup> of more than six shots unless he has been specially appointed so to do<sup>8</sup>; and the qualifications required for such appointment and for appointment as a shotfirer are specified<sup>9</sup>.

1 Other than a safety-lamp mine as defined in the Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993, SI 1993/208, reg 2(1) (see PARA 806 note 2): Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 1 (amended by SI 1993/208).

2 An authorised inspector (defined in PARA 375 note 2), if satisfied that the application of any provision of the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, is inappropriate in relation to a mine or part of a mine may, by notice served on the manager, exempt the mine or part from its application: reg 55 (amended by virtue of SI 1974/2013). The 1956 regulations were made under powers contained in the Mines and Quarries Act 1954 ss 69, 141, which, so far as relevant, were repealed by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

3 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 2(1).

4 'Safety fuse' means a fuse consisting of gunpowder protected either by not less than three coverings of thread or by not less than two coverings of thread and one of tape or gutta percha, being of such a quality that the burning rate does not vary more than ten seconds above or below 30 seconds for each 300 mm of fuse: Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 56(1) (amended by virtue of SI 1978/1648).

5 'Detonator' includes safety-fuse capped with a detonator: Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 56(1).

6 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 2(1) proviso.

7 'Round' means a number of shots fired (1) electrically in series either simultaneously or by means of delay detonators; or (2) by fuse or means of apparatus approved for firing a number of shots by fuse simultaneously by the Health and Safety Executive (as to which see PARA 361 et seq); or (3) by up to four fuses lighted at one time: see Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 56(1).

8 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 2(2).

9 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 3 (amended by SI 1993/1897 and SI 2006/1031).

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### **813. Storage and movement of explosives at stratified ironstone, shale or fireclay mines.**

Subject to a power of exemption<sup>1</sup>, the manager of a stratified ironstone, shale or fireclay mine other than a safety-lamp mine must ensure that explosives, detonators and safety fuses are stored only on the surface and at an explosives store<sup>2</sup>. He must appoint a place near the top of the shaft or outlet for the deposit of explosives and detonators brought out of the mine and may appoint a place, other than an explosives store, for the issue of such articles<sup>3</sup>; and each such place and the explosives store must be in the charge of a competent person<sup>4</sup>. The capping of safety fuse with a detonator may only be done at a suitable place appointed for that purpose by the manager of the mine<sup>5</sup>.

Special provisions govern the security and control of detonators in store and their issue from store<sup>6</sup>, their conveyance below ground in a locked case, and their secure retention in the case until required for use<sup>7</sup>. Explosives may only be taken below ground in the form of a cartridge<sup>8</sup> and, until required for use, must be kept in a closed canister containing not more than 2.25 kilograms of explosive<sup>9</sup>. Explosives may be conveyed between an explosives store and one or more reserve stations or the working face in locked canisters of any size if they are carried in a special carriage and in accordance with a scheme of transit which complies with specified requirements<sup>10</sup>.

1 See PARA 812 note 2.

2 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 1, 4(1) (reg 1 amended by SI 1993/208). As to the application of these regulations and their continuance in force see PARA 812 notes 1-2. As to the meanings of 'safety fuse' and 'detonator' see PARA 812 notes 4-5. As to the licensing of such stores see PARA 808.

3 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 4(2).

4 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 4(3).

5 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 5 (amended by SI 2005/1082).

6 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 6.

7 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 7, 8.

8 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 9.

9 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 10 (amended by SI 1978/1648 and SI 1993/1897).

10 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 11 (amended by SI 1993/1897). Subject to the manager's right to require a reference on it, an authorised inspector (see PARA 375 note 2) may by notice require such a scheme to be amended: see the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 11(5), (6). As to references upon notices see PARA 774 note 20.





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#### **814. Shotfiring equipment at stratified ironstone, shale and fireclay mines.**

Subject to a power of exemption<sup>1</sup>, the equipment which must be provided for each shotfirer at a mine of stratified ironstone, shale or fireclay other than a safety-lamp mine who is to fire shots electrically is specified<sup>2</sup>, and no person may fire a shot by means of electric shotfiring apparatus or cable not provided by the owner<sup>3</sup>, or which is not of a specification approved by the Health and Safety Executive<sup>4</sup>. A shotfirer in charge of electric shotfiring apparatus must keep the removable handle or key in his possession and removed from the apparatus except when he is about to fire a shot<sup>5</sup>. If the apparatus appears defective, he must forthwith have it returned to the surface, reporting the circumstances to the appointed supervisor<sup>6</sup> and, in writing, to the manager<sup>7</sup>. The manager must ensure that such apparatus is properly cleaned, overhauled and tested at specified intervals<sup>8</sup>. No person may open or tamper with any electric shotfiring apparatus below ground<sup>9</sup> or use shotfiring cable for any purpose other than shotfiring<sup>10</sup>.

1 See PARA 812 note 2.

2 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 12 (amended by virtue of SI 1974/2013). As to the application of the regulations and their continuance in force see PARA 812 notes 1-2.

3 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 13. As to the meaning of 'owner' for the purposes of the Mines and Quarries Act 1954 see PARA 395 note 5.

4 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 14 (amended by virtue of SI 1974/2013). As to the Health and Safety Executive see PARA 361 et seq.

5 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 15.

6 I.e. a supervisor appointed in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(1)(a) (see PARA 748): Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 16(1) (amended by SI 1993/1897).

7 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 16 (as amended: see note 6).

8 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 17 (amended by virtue of SI 1974/2013).

9 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 18(1).

10 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 18(2).

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### **815. Shotfiring at stratified ironstone, shale or fireclay mines.**

Subject to a power of exemption<sup>1</sup>, comprehensive provisions are made for the drilling and cleaning of shotholes at a mine of stratified ironstone, shale or fireclay other than a safety-lamp mine<sup>2</sup>, the charging of shotholes<sup>3</sup>, and the firing of shots generally<sup>4</sup>, electrically<sup>5</sup> and by fuse<sup>6</sup>. Before firing a shot, a shotfirer must give adequate warning if the shot is likely to blow through into another place<sup>7</sup> and in any case must (1) determine the danger zone<sup>8</sup>; (2) either post sentries or place fences at the entrances to that zone<sup>9</sup>; and (3) see that everyone has either withdrawn or is in proper shelter<sup>10</sup>. Sentries must remain at their posts until directed to leave by the person who posted them<sup>11</sup>, and other persons must obey the sentries or warning signs<sup>12</sup>. The precautions to be taken after shotfiring are specified<sup>13</sup>, and additional provisions are made as to shotfiring in shafts and staple-pits<sup>14</sup>.

When a shot must be treated as a misfire<sup>15</sup>, and the general precautions to be taken in case of a misfire<sup>16</sup>, are specified; and the manager must provide a detailed scheme for dealing with misfires<sup>17</sup>.

<sup>1</sup> See PARA 812 note 2.

<sup>2</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 19, 20 (reg 19 amended by SI 1978/1648). As to the application of the regulations and their continuance in force see PARA 812 notes 1-2.

<sup>3</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 21-25 (reg 21 amended by SI 1978/1648; Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 24 amended by virtue of SI 1974/2013).

<sup>4</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 26, 27 (reg 27 amended by SI 1993/1897).

<sup>5</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 28 (amended by virtue of SI 1974/2013; and by SI 1978/1648).

<sup>6</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 29 (amended by virtue of SI 1974/2013; and by SI 1978/1648).

<sup>7</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 30.

<sup>8</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 31(1).

<sup>9</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 31(2)(a). Such a fence must be conspicuously marked with the words 'danger' and 'shot firing': reg 31(2)(a).

<sup>10</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 31(2)(b). He must also himself take shelter: reg 31(2)(c).

<sup>11</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 32(1).

<sup>12</sup> Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 32(2).

<sup>13</sup> See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 33 (amended by SI 1993/1897).

14 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, regs 34-39 (reg 39 amended by SI 1993/1897). As to the meaning of 'shaft' see PARA 763 note 15; and as to the meaning of 'staple-pit' see PARA 763 note 2.

15 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 40 (amended by virtue of SI 1974/2013).

16 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 41 (amended by SI 1993/1897).

17 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 42. Subject to the manager's right to require a reference on it, an authorised inspector (defined in PARA 375 note 2) may, by notice, require a scheme to be amended: reg 42(3), (4) (amended by virtue of SI 1974/2013). As to references upon notices see PARA 774 note 20.

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#### **816. Explosives for killing horses at stratified ironstone, shale or fireclay mines.**

None of the provisions set out above as to explosives at stratified ironstone, shale or fireclay mines (not being safety-lamp mines)<sup>1</sup> except those relating to the storage of explosives<sup>2</sup> applies to apparatus and explosive cartridges approved by the Health and Safety Executive<sup>3</sup> for use in mines for destroying horses<sup>4</sup>. Subject to a power of exemption<sup>5</sup>, such apparatus or cartridges must not be taken or used below ground for any other purpose<sup>6</sup>, and the manager must ensure that such apparatus is kept and used by a competent person appointed by him<sup>7</sup>, and is cleaned and examined after use<sup>8</sup>. Cartridges must only be issued to the person authorised to use them and must be issued in a locked case or box<sup>9</sup>, and neither the cartridges nor their container may be mixed with other explosives or detonators<sup>10</sup>. The container must be kept locked<sup>11</sup> and no cartridge is to be removed from the container until it is required for use<sup>12</sup>.

1 See PARA 812 et seq.

2 I.e. the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 4: see PARA 813 text and notes 1-4. As to the application of the regulations and their continuance in force see PARA 812 notes 1-2.

3 As to the Health and Safety Executive see PARA 361 et seq.

4 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 51(1) (amended by SI 1993/208).

5 See the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 55; and PARA 812 note 2.

6 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 51(2).

7 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 52(a). As to competent persons generally see PARA 748 note 7.

8 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 52(b).

9 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 53(1).

10 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 53(2), (3).

11 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 53(3).

12 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, reg 53(4).

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**817. Shotfirers at mines other than of coal, stratified ironstone, shale or fireclay.**

At mines other than mines of coal, stratified ironstone, shale or fireclay<sup>1</sup>, subject to a power of exemption<sup>2</sup>, the firing of shots otherwise than by competent persons appointed by the manager as shotfirers is prohibited<sup>3</sup>.

1 In mines other than those to which either the Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956, SI 1956/1943, or the Coal and Other Safety-Lamp Mines (Explosives) Mines Regulations 1993, SI 1993/208, apply (see PARAS 806 note 2, 812 note 1): Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 5 (substituted by SI 1993/208). These regulations were made under powers contained in, inter alia, the Mines and Quarries Act 1954 ss 69, 141, which were repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

2 An authorised inspector (see PARA 375 note 2) may, by notice served on the manager, exempt a mine or part of it, or any thing or class of things at it, from the application of any provision of the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, if he is satisfied that the safety of employees will not be prejudiced thereby: reg 3.

3 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 6(1). As to the appointment of such persons generally see PARA 806 note 3.

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**818. Storage and movement of explosives at mines other than of coal, stratified ironstone, shale or fireclay.**

Subject to a power of exemption<sup>1</sup>, the manager of a mine other than a mine of coal, stratified ironstone, shale or fireclay must ensure that explosives are stored only on the surface and at an explosives store<sup>2</sup>. He must appoint a place near the top of the shaft or outlet for the deposit of explosives and detonators brought out of the mine and may appoint a place (other than an explosives store) for the issue of such articles<sup>3</sup>; and each such place and the explosives store must be in charge of a competent person<sup>4</sup>.

Special provisions govern the security and control of detonators in store and their issue from it<sup>5</sup>; their conveyance below ground in a locked case<sup>6</sup>; and their secure retention in the case until required for use<sup>7</sup>. Explosives may only be taken below ground in the form of a cartridge<sup>8</sup> or, in mines of slate, either in the form of a cartridge or as loose grain explosive in a canister which contains no explosive in any other form<sup>9</sup>. Until required for use, explosives below ground must be kept in a closed canister containing not more than 10 kilograms of explosives<sup>10</sup>. Explosives may be conveyed between an explosives store and one or more reserve stations or the working face in locked canisters of any size if they are carried in a special carriage and in accordance with a scheme of transit which complies with specified requirements<sup>11</sup>.

1 See PARA 817 note 2.

2 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 7(1). As to the continuance in force of these regulations see PARA 817 note 1. As to the licensing of such stores see PARA 808.

3 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 7(2).

4 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 7(3).

5 See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 8.

6 See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, regs 9, 10(1).

7 See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 10(2).

8 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 11(b).

9 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 11(a).

10 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 12 (amended by SI 1983/994).

11 See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 13. Subject to the manager's right to require a reference, an authorised inspector (see PARA 375 note 2) may by notice require such a scheme to be amended forthwith: reg 13(5), (6). As to references upon notices see PARA 774 note 20.

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**819. Shotfiring equipment at mines other than of coal, stratified ironstone, shale or fireclay.**

Subject to a power of exemption<sup>1</sup>, the use is prohibited in a mine other than a mine of coal, stratified ironstone, shale or fireclay, of electric shotfiring apparatus, cable or fuse, as the case may be, not provided for the purpose by the owner<sup>2</sup>, and of electric shotfiring apparatus operated otherwise than by a removable handle or key<sup>3</sup>. No person may take into or use at such a mine any fuse other than safety fuse, detonating fuse or fuse of a type approved by the Health and Safety Executive<sup>4</sup>. A shotfirer in charge of electric shotfiring apparatus must keep the removable handle or key in his possession and removed from the apparatus except when he is about to fire a shot<sup>5</sup>. If the apparatus appears defective or fails to fire he must forthwith have it returned to the surface or to a place appointed for the purpose by the manager, reporting the circumstances to the manager or to a person appointed by him for the purpose<sup>6</sup>. It is forbidden to use shotfiring cable for any other purpose<sup>7</sup>.

1 See PARA 817 note 2.

2 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 14(1)(a). As to the application of the regulations and their continuance in force see PARA 817 note 1. As to the meaning of 'owner' see PARA 395 note 5.

3 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 14(1)(b).

4 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 14(2) (amended by virtue of SI 1974/2013). As to the Health and Safety Executive see PARA 361 et seq.

5 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 15.

6 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 16.

7 Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 17.

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## **820. Shotfiring at mines other than of coal, stratified ironstone, shale or fireclay.**

Subject to a power of exemption<sup>1</sup>, comprehensive provisions are made, in respect of mines other than mines of coal, stratified ironstone, shale or fireclay, for the drilling, cleaning and charging of shotholes<sup>2</sup>; and the firing of shots generally<sup>3</sup>, electrically<sup>4</sup> and by safety fuse<sup>5</sup>. Before firing a shot a shotfirer must give adequate warning if the shot is likely to blow through into another place<sup>6</sup>, and in any case must (1) determine the danger zone<sup>7</sup>; (2) post sentries or place fences at the entrances to it<sup>8</sup>; and (3) see that everyone has either withdrawn or taken proper shelter<sup>9</sup>. Sentries must remain at their posts until directed to leave by the person who posted them<sup>10</sup>, and other persons must obey the sentries or warning signs<sup>11</sup>. The precautions to be taken after shotfiring are specified<sup>12</sup>, and additional provisions are made as to shotfiring in shafts, winzes and raises<sup>13</sup>.

When a shot must be treated as a misfire<sup>14</sup>, and the general precautions to be taken in the event of a misfire<sup>15</sup>, are specified; and the manager must provide a detailed scheme for dealing with misfires<sup>16</sup>.

<sup>1</sup> See PARA 817 note 2.

<sup>2</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, regs 18-24 (regs 19, 22 amended by SI 1983/994). As to the application of the regulations and their continuance in force see PARA 817 note 1.

<sup>3</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 25.

<sup>4</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 26 (amended by SI 1983/994).

<sup>5</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 27 (amended by SI 1983/994).

<sup>6</sup> Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 28.

<sup>7</sup> Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 29(1).

<sup>8</sup> Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 29(2)(a). Fences must be conspicuously marked with the words 'danger' and 'shotfiring': reg 29(2)(a).

<sup>9</sup> Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 29(2)(b). The shotfirer must also take proper shelter himself: reg 29(2)(c).

<sup>10</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 30(1).

<sup>11</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 30(2).

<sup>12</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 31.

<sup>13</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, regs 32-35.

<sup>14</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 36.

<sup>15</sup> See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 37.



16 See the Miscellaneous Mines (Explosives) Regulations 1959, SI 1959/2258, reg 38. Subject to the manager's right to require a reference on it, an authorised inspector (see PARA 375 note 2) may, by notice, require a scheme to be amended: reg 38(3), (4) (amended by virtue of SI 1974/2013). As to references upon notices see PARA 774 note 20.

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### ***C. OTHER MISCELLANEOUS MACHINERY AND APPARATUS***

#### **821. Maintenance of machinery and apparatus at mines other than mines of coal, stratified ironstone, shale or fireclay.**

At mines other than mines of coal, stratified ironstone, shale or fireclay<sup>1</sup>, machinery in motion must not be cleaned<sup>2</sup>, nor must it be oiled or greased unless provision is made for the work to be done in safety<sup>3</sup>, and belts must not be put on or off pulleys while the machinery is in motion under power otherwise than by means of a safety contrivance<sup>4</sup>.

1 Although the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, apply to all mines (see PARA 748 note 1) the provisions described in the text and notes 2-4 have not been revoked and would seem to co-apply to these mines.

2 Miscellaneous Mines (General) Regulations 1956 reg 37(1) (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

3 Miscellaneous Mines (General) Regulations 1956 reg 37(2).

4 Miscellaneous Mines (General) Regulations 1956 reg 37(3).

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## **822. Use of engines and steam boilers.**

No internal combustion engine, steam boiler or locomotive may be used below ground except in accordance with regulations which so provide, or with the consent<sup>1</sup> of an authorised inspector<sup>2</sup>.

Regulations have been made<sup>3</sup> governing the design, construction, use and maintenance of locomotives when used below ground at mines of coal, stratified ironstone, shale or fireclay; but they do not authorise such use without the consent of an authorised inspector<sup>4</sup>.

1 As to the variation or revocation of consents see the Mines and Quarries Act 1954 s 176; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 518.

2 Mines and Quarries Act 1954 s 83 (amended by SI 1974/2013). As to the continuance in force of consents given by the Secretary of State under this provision as originally enacted see the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 7(2). As to the meaning of 'authorised inspector' see PARA 375 note 2. The requirements of this provision are disapplied by the Supply of Machinery (Safety) Regulations 1992, SI 1992/3073, reg 33(1), (2)(g) in so far as they relate to the supply of relevant machinery within the meaning of reg 3(2) (but note that SI 1992/3073 is revoked as from 29 December 2009 by SI 2008/1597).

3 Ie the Coal and Other Mines (Locomotives) Regulations 1956 (contained in the Coal and Other Mines (Locomotives) Order 1956, SI 1956/1771, Sch 1): see PARA 782.

4 Coal and Other Mines (Locomotives) Regulations 1956 reg 34.

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### **823. Air, gas and steam containers.**

Apparatus used as, or forming, part of the equipment of a mine<sup>1</sup> being apparatus which contains or produces air, gas<sup>2</sup> or steam at a pressure greater than atmospheric pressure, must be so constructed, installed, maintained<sup>3</sup> and used as to obviate any risk from fire<sup>4</sup>, bursting, explosion<sup>5</sup> or collapse or the production of noxious gases<sup>6</sup>.

The Health and Safety Executive<sup>7</sup> may at any time require such apparatus to be examined by its nominee, to whom the manager must give the necessary facilities, and if as the result of such examination it appears that any report of an examination (being a report required by regulations) was inadequate or inaccurate in a material particular, the Executive may recover the cost of the examination by its nominee from the mine owner<sup>8</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 As to the meaning of 'gas' see PARA 789 note 5.

3 As to the meaning of 'maintained' see PARA 459 note 3.

4 As to means of escape from places in which there is risk of fire or escape of steam or gas see PARA 825.

5 As to the reporting of explosions and other dangerous occurrences see PARA 399 et seq.

6 Mines and Quarries Act 1954 s 84(1).

7 As to the Health and Safety Executive see PARA 361 et seq.

8 Mines and Quarries Act 1954 s 84(3) (amended by virtue of SI 1974/2013). As to the meaning of 'owner' see PARA 395 note 5.

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**824. Hoppers and kilns at mines other than mines of coal, stratified ironstone, shale or fireclay.**

At mines other than mines of coal, stratified ironstone, shale or fireclay, secure fencing must be provided for the top of any hopper or kiln<sup>1</sup>.

<sup>1</sup> See the Miscellaneous Mines (General) Regulations 1956 reg 75 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

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## **(vii) Fire and Danger Precautions**

### **825. Means of escape in case of fire.**

No person may be employed at a mine<sup>1</sup> in a room or similar confined space in which, owing to the nature of any machinery, apparatus or materials in it, there is a risk of a dangerous fire or the escape of steam in substantial quantity or of noxious gas<sup>2</sup> in a dangerous concentration, unless either steps are taken (whether by providing additional exits or otherwise) to minimise the risk of that person being trapped, or the circumstances in which he is employed are themselves such as to minimise that risk<sup>3</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 As to the meaning of 'gas' see PARA 789 note 5.

3 Mines and Quarries Act 1954 s 73. There is deemed to be a separate contravention in respect of each person so employed: s 154(1) (amended by SI 1999/2024). As to means of exit see further PARA 757. As to offences and penalties see PARA 852 et seq.

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## **826. Precautions against fire below ground.**

At mines of coal, stratified ironstone, shale or fireclay, the storage of highly inflammable material below ground is prohibited except in a fireproof room, compartment or box<sup>1</sup>. If such a mine was newly opened on or after 16 December 1911<sup>2</sup> and more than 30 persons are employed below ground, no building or structure at the top of a shaft<sup>3</sup> or outlet may be made of, or comprise, any inflammable material likely to cause danger from fire to persons below ground<sup>4</sup>. No engine-room or motor-room constructed after that date below ground may be made of or comprise such material<sup>5</sup>.

At other mines, no inflammable material may be used in the construction of any room or compartment containing electrical apparatus<sup>6</sup> below ground, or inside any room or compartment in proximity to such apparatus, unless the apparatus is so constructed, protected and worked as to obviate the risk of fire; and no oil or other inflammable material may be stored in any place below ground containing electrical apparatus<sup>7</sup>. No loose material which is burning may be left unattended below ground, except where it is the duty of the person concerned to take other steps<sup>8</sup> because of the presence of inflammable gas or other danger<sup>9</sup>; and no calcium carbide may be taken below ground otherwise than in a lamp or water-tight metal container<sup>10</sup>.

1 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 2(1). These regulations (which are contained in the Coal and Other Mines (Fire and Rescue) Order 1956, SI 1956/1768, Sch 1) took effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed, so far as relevant, by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: see reg 7(3).

2 I.e. the date on which the Coal Mines Act 1911 (repealed) received the royal assent.

3 As to the meaning of 'shaft' see PARA 763 note 15.

4 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 2(2). As to the precautions in case of suspected outbreak of fire see PARA 831.

5 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 2(3).

6 'Electrical apparatus' is not defined for these purposes.

7 Miscellaneous Mines (General) Regulations 1956 reg 32 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

8 I.e. steps under the Mines and Quarries Act 1954 s 79 (withdrawal of workmen in cases of danger): see PARA 830. Section 80, referred to in the Miscellaneous Mines (General) Regulations 1956 reg 34, is now repealed except for the purposes of s 115.

9 Miscellaneous Mines (General) Regulations 1956 reg 34.

10 Miscellaneous Mines (General) Regulations 1956 reg 35.

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### **827. Fire-fighting operations at coal, etc mines.**

At mines of coal, stratified ironstone, shale or fireclay, certain precautions against fire must be taken<sup>1</sup>. It is the duty of the manager<sup>2</sup> of every mine<sup>3</sup> to secure the provision of suitable and sufficient means of extinguishing fire at the top of, and at every entrance to, a shaft<sup>4</sup> or outlet where the construction is of inflammable material, in every engine-room, motor-room and boiler gallery of such construction, and at every place at which inflammable material is stored<sup>5</sup>. It is his duty also to secure that dust or sand is ready for use near every electric motor which is not portable apparatus<sup>6</sup>, every transformer and all switchgear<sup>7</sup>.

Except at mines which are naturally wet throughout, and at which no more than 30 persons are employed below ground, and at stratified ironstone mines, the manager must ensure that adequate supplies of water, or portable extinguishers<sup>8</sup> and dust or sand, with equipment for carrying and using the water, dust or sand, are provided at places appropriate to each working face and along any length of road<sup>9</sup> which is a main intake or return<sup>10</sup> airway<sup>11</sup>. Except at mines at which fewer than 100 persons are employed below ground, the manager must secure that adequate supplies of water can be delivered promptly<sup>12</sup> at adequate pressure to any place at which fire is liable to occur and in or through which persons ordinarily work or pass in going to or from their working places<sup>13</sup>.

Where machinery is used for cutting or getting mineral at a working face where an ignition of gas<sup>14</sup> has been or is liable to be produced by such machinery, the machine must be provided with effective means to prevent any such ignition, or a portable extinguisher or a supply of dust or sand must be carried on the machine or, if that is impracticable, such extinguishers or supplies must be placed at suitable intervals along the face<sup>15</sup>.

The manager must arrange for the inspection of all fire-fighting equipment at intervals of not more than 30 days<sup>16</sup> and, except at a mine where fewer than 100 persons are employed below ground, for a proper fire-fighting organisation<sup>17</sup>.

1 See PARA 826.

2 As to the meaning of 'manager' see PARA 750 note 1.

3 As to the meaning of 'mine' see PARA 343 note 1.

4 As to the meaning of 'shaft' see PARA 763 note 15.

5 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 3 (contained in the Coal and Other Mines (Fire and Rescue) Order 1956, SI 1956/1768, Sch 1). As to the continuance in force of these regulations see PARA 826 note 1.

6 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 4.

7 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 4.

8 No fire extinguisher which is liable to give off poisonous gas may be provided below ground: Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 8.

9 As to the meaning of 'road' see PARA 759.



10     be a main intake or return airway for the purposes of the Coal and Other Mines (Ventilation) Regulations 1956 (see PARA 792): Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 5.

11     Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 5.

12     Unless delivered by pipelines and hose extensions, water must be delivered from tanks or barrels by portable manual pumps: Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 6(2).

13     Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 6(1).

14     As to the meaning of 'gas' see PARA 789 note 5.

15     Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 7.

16     Arrangements must also be made for the discharge and filling of extinguishers: Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 9(1)(b). The person making such inspections must make a written report to the manager: reg 9(2).

17     Coal and Other Mines (Fire and Rescue) Regulations 1956 regs 9(1)(a), 10. The arrangements must include fire drills: reg 10.

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### **828. Fire-fighting at other mines.**

At mines other than mines of coal, stratified ironstone, shale or fireclay, suitable and sufficient means of extinguishing fire must be provided at every building or structure at, or adjoining, the top of a shaft<sup>1</sup> or outlet and in every engine-room, motor-room or boiler gallery in the construction of which timber is used<sup>2</sup>; and suitable means for localising and extinguishing fire must be provided at every place below ground in which electrical apparatus<sup>3</sup> is installed if the apparatus is immersed in more than 450 litres of oil in the aggregate<sup>4</sup>. Certain precautions against fire are also prescribed for such mines<sup>5</sup>.

1 As to the meaning of 'shaft' see PARA 763 note 15.

2 Miscellaneous Mines (General) Regulations 1956 reg 31 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).

3 'Electrical apparatus' is not defined for these purposes.

4 Miscellaneous Mines (General) Regulations 1956 reg 33 (amended by SI 1983/994).

5 See PARA 826.

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### **829. Duties of employees in cases of danger.**

Where an employee at work at a mine<sup>1</sup> discovers that a danger has arisen, or is about to arise (including a danger arising from a defect in, or the condition of, any plant or equipment<sup>2</sup> at the mine), he must take such immediate steps as are reasonable for a person in his position to take to prevent the danger that has arisen or is about to arise and where further action to prevent danger is required, forthwith report the matter to a person in the management structure<sup>3</sup> of the mine, normally his supervisor<sup>4</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 'Plant or equipment' is not defined for this purpose.

3 As to the meaning of 'management structure' see PARA 748.

4 See the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5(3). The manager (as to whom see PARA 750 note 1) has a duty to ensure that each employee is made aware of the person in the management structure to whom he must normally report actual or apprehended danger: reg 13(1)(e).

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### **830. Duties of officials in cases of danger generally.**

Where inflammable gas<sup>1</sup> is present in an excessive concentration<sup>2</sup> at any place below ground in a mine<sup>3</sup>, or where it appears to the person in charge of a part of a mine below ground that there is a danger arising either from the presence of inflammable gas, whether in excessive concentration or not, or from any other cause<sup>4</sup>, the person in charge of that part of the mine must (1) forthwith withdraw all persons employed from the affected area<sup>5</sup>; (2) next inform his immediate superior (unless he is himself the manager) and the person in charge of any other part likely to be affected<sup>6</sup>; and (3) as soon after taking the foregoing steps as it is possible to do so without undue risk, ascertain, himself or by some competent person<sup>7</sup>, the condition of the affected area and the measures necessary for making it safe<sup>8</sup>.

When workmen have been withdrawn in accordance with these provisions, no person must be permitted to re-enter the affected area until inflammable gas is not present at any place in it in excessive concentration and the person in charge of that part of the mine or, where any of his superiors are present, the senior of them is satisfied that it is free from all danger from whatever cause<sup>9</sup>. This provision does not, however, prohibit a person entering the affected area for the purpose of saving life, ascertaining its condition and the necessary remedial measures<sup>10</sup>, making it or any other part of the mine safe, ascertaining the effectiveness of any measures taken for making it or another part safe, or ascertaining whether it is safe for general re-entry<sup>11</sup>.

Any person who withdraws workmen in pursuance of these provisions must make and sign a record in a book provided by the owner<sup>12</sup>, giving reasons for his action and recording the results of the investigation<sup>13</sup> as to the condition of the affected area and the remedial measures necessary<sup>14</sup>.

1 As to the meaning of 'gas' see PARA 789 note 5.

2 For the purposes of this provision a concentration is deemed to be excessive (1) in a safety-lamp mine (defined in PARA 800 note 4) or in a part in which the use of permitted lights only is lawful (see PARA 799), if the amount of gas present in the general body of the air is not less than 2% by volume or such greater percentage not exceeding 2.5 as may be prescribed by regulations (Mines and Quarries Act 1954 s 79(5)(a)); (2) in any other place, if the percentage of gas so present is not less than 1.25% or such smaller percentage as may be prescribed by regulations, or if an indication of gas is seen on the lowered flame of a safety-lamp (s 79(5)(b)). No general regulations (ie regulations general to all mines, rather than specific to particular mines) were made for this purpose, and it would seem that any such provision would now be made by health and safety regulations (see PARAS 302, 424).

3 Mines and Quarries Act 1954 s 79(1). See also note 8. As to the meaning of 'mine' see PARA 343 note 1.

4 Mines and Quarries Act 1954 s 79(2). See also note 8.

5 Mines and Quarries Act 1954 s 79(1)(a). 'Affected area' means the area which appears to the person in charge to be affected: s 79(1)(a).

6 Mines and Quarries Act 1954 s 79(1)(b).

7 As to the meaning of 'competent person' see PARA 748 note 7.

8 Mines and Quarries Act 1954 s 79(2)(c). Cf the absolute duty imposed by the words 'where inflammable gas is present' and the qualified duty imposed by the words 'where it appears to the person in charge'.

9 Mines and Quarries Act 1954 s 79(3), (5).

- 10    le carrying out the duty imposed under head (3) in the text.
- 11    Mines and Quarries Act 1954 s 79(3) proviso.
- 12    As to the meaning of 'owner' see PARA 395 note 5.
- 13    le under head (3) in the text.
- 14    Mines and Quarries Act 1954 s 79(4).

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### **831. Duties of officials in cases of fire danger at certain coal, etc mines.**

Where there is a danger or suspected danger consisting of an outbreak of fire in a mine of coal, stratified ironstone, shale or fireclay in which or in part of which the use of permitted lights only is lawful<sup>1</sup>, without prejudice to the duties of officials in cases of danger generally already mentioned<sup>2</sup>, the persons in charge of any part of the mine likely to be affected<sup>3</sup> by the fire, by its smoke or fumes, or by any explosion resulting from it, must withdraw the workmen from any place likely to be so affected, except that, if it appears to the person in charge of the part of the mine from which the signs of fire emanate that there is no immediate danger, persons may remain there for the purpose of preventing danger from arising<sup>4</sup>. When workmen have been so withdrawn, re-entry must not be permitted, except for saving life or for investigation and remedial purposes, until it is reported safe by the manager and, except in certain circumstances, two of the workmen's inspectors<sup>5</sup>. The report must be full and accurate and a copy of it must be posted at the pit head<sup>6</sup>. When it is ascertained that a fire has broken out, measures must be taken to render harmless any coal dust in accessible places contiguous to the fire<sup>7</sup>.

1 As to the meaning of 'permitted lights' see PARA 792 note 10.

2 See PARA 830.

3 When a fire has broken out the following parts are deemed to be affected: all parts of the seam in which the fire exists; all parts of any other seam with a common entrance to a shaft or outlet, unless it is protected from the spread of any explosion by approved means or (in the case of a seam other than that in which the fire exists) it is naturally wet throughout; and, if a fire is being dammed off in any part, all other parts are deemed to be affected and no one is allowed below ground except for that work or for securing the safety of the mine: Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 11(4), (5) (amended by virtue of SI 1974/2013). As to the continuance in force of these regulations (which are contained in the Coal and Other Mines (Fire and Rescue) Order 1956, SI 1956/1768, Sch 1) see PARA 826 note 1.

4 Coal and Other Mines (Fire and Rescue) Regulations 1956 regs 1, 11(1).

5 See the Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 11(2) (amended by SI 1985/2023). The provision refers also to an under-manager, but the statutory provisions relating to that post have been repealed by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 41(1), (3), Sch 3 Pt I, without, however, any consequential amendment in this case. As to workmen's inspectors see PARA 383.

6 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 11(3). As to the posting of notices see PARAS 752, 774.

7 Coal and Other Mines (Fire and Rescue) Regulations 1956 reg 11(6).

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### **(viii) Escape and Rescue**

#### **832. Escape and emergency organisation in all mines.**

The manager<sup>1</sup> of every mine<sup>2</sup> must prepare and maintain a written plan (an 'emergency plan') setting out the action to be taken to effect safely and promptly the evacuation and rescue of persons from the mine should an emergency situation<sup>3</sup> occur<sup>4</sup>. In preparing an emergency plan the manager must have regard to any relevant risk assessment<sup>5</sup> made<sup>6</sup>.

The manager must make a thorough review of the emergency plan whenever:

- 1687 (1) there is reason to suspect that the emergency plan is no longer appropriate; or
- 1688 (2) there has been a significant change either in the matters to which the emergency plan relates, or in the ownership or operation of the mine; or
- 1689 (3) the risk assessment is reviewed; or
- 1690 (4) the plan has been put into action<sup>7</sup>,

and must make such a thorough review in any event at least once every 12 months<sup>8</sup>. Where as a result of any such review any change to the emergency plan or to the action to be taken under it is required the manager must make such change and must keep a record of any action taken as a result<sup>9</sup>.

The manager must ensure that the appropriate action set out in the emergency plan is taken should an emergency situation occur<sup>10</sup>. He must keep readily available at the mine a sufficient number of copies of the emergency plan as amended from time to time<sup>11</sup>.

The owner<sup>12</sup> of every mine must provide on the surface at the mine suitable accommodation which is sufficient for any persons who may be engaged in the rescue of persons from below ground or practising such work and located near to a shaft or entrance which gives convenient access to all parts of the mine<sup>13</sup>. The manager of every mine must appoint a competent and suitably experienced person to be in charge of the emergency accommodation<sup>14</sup>.

The owner of every mine must make effective arrangements to ensure that appropriate equipment is promptly available for use at all times in any operation involving escape or rescue from the mine<sup>15</sup>. The manager of every mine must take effective steps to ensure that that equipment is maintained in good condition and ready for use at all times and is stored in an easily accessible place<sup>16</sup>.

The owner of every mine must keep readily available at the mine a sufficient number of plans of the workings of the mine which are suitable for use in an emergency situation<sup>17</sup>.

The owner of every mine must establish and maintain the necessary warning and other communication systems to enable assistance, escape and rescue operations to be launched forthwith if necessary<sup>18</sup>. The manager of every mine must ensure that in the event of an emergency situation occurring at the mine those warning and communication systems are put into operation forthwith<sup>19</sup>.

The manager of every mine must take effective steps to ensure that in the event of an emergency situation occurring at the mine only persons authorised by the manager or by a

member of the management structure<sup>20</sup> of the mine go below ground at the mine or enter an affected area on the surface and that an accurate record of the names of such persons is kept<sup>21</sup>.

The owner of every mine must provide, where necessary, suitable self-rescuers<sup>22</sup> for all persons going below ground at the mine and safe havens<sup>23</sup> or facilities for the exchange and recharge of self-rescuers<sup>24</sup>. The manager must ensure that every person issued with a self-rescuer under the above provision has been instructed how to use it and does not go below ground without it and that the self-rescuers are checked regularly, are maintained in good condition and are stored in a suitable place at the mine<sup>25</sup>. Every person at a mine who is provided with a self-rescuer must keep the self-rescuer with him and available for use at all times when he is below ground at the mine<sup>26</sup>.

The manager of every mine must ensure that:

- 1691 (a) all persons who work at the mine are trained in the appropriate actions to be taken in the event of an emergency situation occurring at the mine and in the use of equipment to be used in an emergency situation and must ensure that practices of the actions are held at regular intervals; and
- 1692 (b) all other persons who go below ground at the mine receive information on the appropriate actions to be taken in the event of an emergency situation occurring at the mine and in the use of equipment to be used in an emergency situation<sup>27</sup>.

The manager of every mine must ensure that each person who works at the mine receives appropriate written instructions and information on the actions to be taken in the event of an emergency situation occurring at the mine as is appropriate having regard to the provisions of the emergency plan<sup>28</sup>. He must also ensure that a copy of the emergency plan and the emergency instructions for the time being in force is kept in the covered accommodation provided<sup>29</sup> at the mine<sup>30</sup>.

Every person at work at the mine must comply with the emergency instructions<sup>31</sup>.

1 For these purposes, 'manager' means, in relation to any mine, the person appointed under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8 (see PARAS 748, 750) as the manager of that mine, and in relation to a part of a mine the person appointed under reg 15 (see PARA 748) as the manager of that part: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

2 'Mine' means a mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1): Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1). Except where otherwise expressly provided, the 1995 regulations apply to all mines: reg 3(1). Regulations 12(2), 13 and 14 (see PARA 833) together with Pt IV (regs 15-27) (see PARA 834) do not apply to a tourist mine: reg 3(3). As to the application of Pt IV see reg 3(2); and PARA 834. For transitional provisions see reg 31. 'Tourist mine' means a mine the principal activity of which is to demonstrate the mine or the workings of the mine, to persons not employed at the mine, rather than the getting of minerals or the products of minerals: reg 2(1).

Subject to reg 28(2), the Health and Safety Executive may, by a certificate in writing, exempt any mine or class of mines or any person or class of persons from all or any of the prohibitions or requirements of the 1995 regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 28(1). The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case, and in particular to (1) the conditions, if any, which it proposes to attach to the exemption; and (2) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 28(2). As to the Health and Safety Executive see PARA 361 et seq.

The Mines and Quarries Act 1954 s 157 (defences: see PARA 878) does not apply to any legal proceedings or prosecution which are based on an allegation of a contravention of the 1995 regulations: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 29. As to offences and penalties generally see PARA 852 et seq.



3 'Emergency situation' means a situation which renders necessary either or both the evacuation and rescue of persons from a mine: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

4 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(1).

5 le the risk assessment made under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.

6 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(2) (amended by SI 1999/3242).

7 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(3)(a).

8 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(3)(b).

9 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(4).

10 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(5)(a).

11 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 4(5)(b).

12 'Owner' means any owner within the meaning of the Mines and Quarries Act 1954 s 181(1) or (4) (see PARA 395 note 5): Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

13 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 5(1).

14 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 5(2).

15 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 6(1).

16 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 6(2).

17 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 7.

18 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 8(1).

19 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 8(2).

20 For these purposes, 'management structure' is to be construed in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10 (see PARA 748): Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

21 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 9.

22 'Self-rescuer' means respiratory protective equipment designed for use while escaping from a mine: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

23 'Safe haven' means a place below ground at a mine which is provided with facilities such that persons may wait there in safety to be rescued: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

24 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 10(1).

25 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 10(2).

26 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 10(3).

27 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 11(1).

28 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 11(2).

29 le provided in accordance with the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 36: see PARA 752.

30 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 11(3).

31 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 11(4).

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### **833. Rescue; general duties.**

No mine<sup>1</sup> may be worked unless the owner<sup>2</sup> has made effective arrangements suitable for the mine both for the rescue of persons from the mine and for the carrying out of work necessary to secure the health and safety of persons below ground in the mine in an emergency situation<sup>3</sup>. Without prejudice to the generality of this provision, every owner of a mine of a specified type<sup>4</sup>, other than a tourist mine<sup>5</sup>, must:

- 1693 (1) make effective arrangements to ensure that two rescue teams of five trained and fully equipped rescue team members are available to attend at the mine should an emergency situation requiring the use of breathing apparatus<sup>6</sup> occur below ground at the mine;
- 1694 (2) make effective arrangements to ensure that those rescue teams are capable of reaching the mine within 60 minutes of being notified of such an emergency situation occurring below ground at the mine; and
- 1695 (3) secure that those rescue team members reach the mine within 60 minutes of being notified of such an emergency situation occurring below ground at the mine<sup>7</sup>;

and every owner of a mine of coal, other than a tourist mine<sup>8</sup>, must make effective arrangements to ensure that sufficient trained and fully equipped rescue team members are available as required to provide a continuous 24 hour rescue service following an emergency situation occurring below ground at the mine<sup>9</sup>.

Without prejudice to the above provisions, no mine of coal other than a tourist mine<sup>10</sup> may be worked unless the owner of the mine is a participant in a mine rescue scheme<sup>11</sup> approved by the Secretary of State<sup>12</sup>. The Secretary of State may only approve a mine rescue scheme if the scheme appears to the Secretary of State to be such as secures that it is reasonably practicable<sup>13</sup> for every owner of a mine of coal who is required to do so to participate, on reasonable terms, in the scheme<sup>14</sup>. Furthermore, the Secretary of State may only give approval to a mine rescue scheme after he has consulted with the Health and Safety Executive<sup>15</sup> and any other persons whom he considers to be appropriate<sup>16</sup> and may only withdraw his approval from a mine rescue scheme on the advice of the Executive and after he has consulted with any other persons whom he considers to be appropriate<sup>17</sup>.

The owner of every mine of coal, other than a tourist mine<sup>18</sup>, must make arrangements:

- 1696 (a) for any person designated under the relevant mine rescue scheme to inspect the emergency accommodation and equipment provided<sup>19</sup>; and
- 1697 (b) for that person to be accompanied by a member of the management structure<sup>20</sup> of the mine; and
- 1698 (c) for any defect or deficiency disclosed by the inspection to be reported to the manager of the mine<sup>21</sup>.

The manager<sup>22</sup> of every such mine of coal must provide the person referred to in head (a) above with a copy of the current emergency plan<sup>23</sup>. He must ensure that appropriate and prompt action is taken to remedy any defect or deficiency which is reported in accordance with head (c) above<sup>24</sup> and must keep a record of any action so taken<sup>25</sup>. He must also keep a record of

the results of any inspection carried out in accordance with heads (a) to (c) above and of any defect or deficiency which is reported in accordance with head (c) above<sup>26</sup>.

- 1 As to the meaning of 'mine' for these purposes see PARA 832 note 2.
- 2 As to the meaning of 'owner' for these purposes see PARA 832 note 12.
- 3 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 12(1). As to the meaning of 'emergency situation' see PARA 832 note 3. As to the application or, and exemptions from, the 1995 regulations see PARA 832 note 2.
- 4 I.e a mine of a type described in the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 3(2): see PARA 834.
- 5 See the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 3(3), cited in PARA 832 note 2 (where the definition of 'tourist mine' is set out).
- 6 'Breathing apparatus' means apparatus designed for use in rescue operations in mines which is of a self-contained closed-circuit type, whereby the concentration of carbon-dioxide in the exhaled air is reduced and the concentration of oxygen increased prior to reinhalation, and is used either with a full facepiece or with a mouthpiece and noseclip: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).
- 7 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 12(2)(a). In any proceedings against a person for an offence consisting of a contravention of reg 12(2)(a)(iii) (see head (3) in the text) it is a defence for that person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence: reg 30. As to offences and penalties generally see PARA 852 et seq.
- 8 See note 5.
- 9 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 12(2)(b).
- 10 See note 5.
- 11 'Mine rescue scheme' means any scheme or other arrangements the participants in which are entitled, in an emergency, to the services of persons with the expertise and equipment required for rescuing individuals from below ground at a mine: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).
- 12 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 13(1). For these purposes, the reference in the text to participating in a mine rescue scheme includes participating on terms so that the participants are entitled, in an emergency, to the services of persons with the expertise and equipment required for rescuing individuals from underground: reg 13(2). As to the Secretary of State see PARA 349 et seq.
- 13 As to what is reasonably practicable see PARA 417.
- 14 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 13(3).
- 15 As to the Health and Safety Executive see PARA 361 et seq.
- 16 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 13(4)(a) (amended by SI 2008/960).
- 17 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 13(4)(b) (amended by SI 2008/960).
- 18 See note 5.
- 19 I.e provided in accordance with the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, regs 5, 6: see PARA 832. 'Emergency accommodation' is to be construed in accordance with reg 5: reg 2(1).
- 20 As to the meaning of 'management structure' see PARA 832 note 20.
- 21 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 14(1).
- 22 As to the meaning of 'manager' see PARA 832 note 1.
- 23 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 14(2)(a). 'Emergency plan' is to be construed in accordance with reg 4 (see PARA 832): reg 2(1).
- 24 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 14(2)(b).

25     Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 14(2)(c).

26     See note 25.

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#### **834. Rescue team and conduct of rescue operations in certain mines of coal, etc.**

The following provisions<sup>1</sup> do not apply to tourist mines<sup>2</sup>. Subject to that, they apply to:

- 1699 (1) a mine<sup>3</sup> of coal;
- 1700 (2) any other mine containing zones below ground in which firedamp<sup>4</sup> whether or not normally present is likely to occur in a quantity sufficient to indicate danger; or
- 1701 (3) any other mine where an irrespirable atmosphere<sup>5</sup> is likely to occur below ground in a quantity requiring the use of breathing apparatus<sup>6</sup>.

Each rescue team must comprise five rescue team members one of whom must be the rescue team captain<sup>7</sup>. The manager<sup>8</sup> of every mine must, where there are suitable employees at the mine to act as rescue team members, select an appropriate number of them so to act and must ensure that they are properly trained as rescue team members and are available to act in that capacity<sup>9</sup>. No person, whether an employee at a mine or otherwise, may serve as a rescue team member unless he is suitably qualified and experienced and he has, within the last preceding 12 months:

- 1702 (a) been certified, by a suitably qualified and registered medical practitioner<sup>10</sup>, after thorough examination to be fit to undertake rescue work using breathing apparatus; and
- 1703 (b) attended a suitable course of initial or further training and practice in rescue work and he has been certified, by the person in charge of the course, to be proficient and to be able to undertake rescue work with breathing apparatus<sup>11</sup>.

Only competent and suitably experienced persons may train rescue team members for rescue operations involving the use of breathing apparatus<sup>12</sup>.

Except in any situation where the carrying out of such an examination would prejudice an attempt to save life, the manager of every mine must ensure that rescue team members are examined by a suitably qualified and registered medical practitioner before each wearing of breathing apparatus in an irrespirable atmosphere other than such a wearing for training purposes and that rescue team members do not wear breathing apparatus unless they are found fit to do so by that medical practitioner<sup>13</sup>. Each rescue team member must report to the appropriate person at the mine if the rescue team member is aware of any reason why he may not be fit to undertake rescue work<sup>14</sup>.

The manager of every mine must:

- 1704 (i) take effective steps to ensure that records of medical examinations and of training provided to the rescue team members who are employees at the mine are maintained; and
- 1705 (ii) provide each such rescue team member with a document bearing a recent photograph of that rescue team member and setting out the results of the medical examinations undergone by that rescue team member and a summary of the training and practices undertaken by that rescue team member<sup>15</sup>.

At all times during a rescue operation the rescue team must be under the immediate control of the rescue team captain<sup>16</sup>. Every rescue team captain must, during a rescue operation, direct the rescue team and use his best endeavours to secure its safety<sup>17</sup>.

The manager of every mine must ensure that any operation during which it is reasonably foreseeable that breathing apparatus could be required is undertaken under the direction of a rescue officer acting under the overall control of the manager<sup>18</sup>, but this does not prevent rescue team members from carrying out operations wearing breathing apparatus in the absence of such a rescue officer in circumstances where in the opinion of the manager, which is reasonably held in the circumstances, a delay would endanger life<sup>19</sup>. Every rescue officer or other person in charge of operations involving rescue team members wearing breathing apparatus must work to secure the safety of rescue team members and to ensure that the operations are carried out with due regard to the safety of the rescue team members<sup>20</sup>. The manager of every mine must consult with the rescue officers during any operation which requires any member of a rescue team to wear breathing apparatus at the mine and must give due consideration to any recommendation received from any of the rescue officers<sup>21</sup>. No person is to be permitted to serve as a rescue officer unless that person is a suitably experienced, competent and qualified individual<sup>22</sup>.

No person at a mine may wear breathing apparatus unless trained and certified fit to do so<sup>23</sup>. The owner<sup>24</sup> of every mine must make effective arrangements to ensure that:

1706 (A) breathing apparatus is not issued for use or worn unless it is suitable for its intended purpose and it has been properly maintained and regularly tested by an authorised competent person; and

1707 (B) breathing apparatus is stored in a suitable place<sup>25</sup>.

The manager of every mine must take effective steps to ensure that there is kept, in a suitable permanent form, a record of all testing, analysis, service and maintenance carried out on the breathing apparatus<sup>26</sup>. Each rescue team member must carry out a suitable test or examination on receiving breathing apparatus, before going underground and before going beyond any fresh air base<sup>27</sup> and must inform a rescue officer forthwith if in the opinion of the rescue team member the breathing apparatus is not in full working order<sup>28</sup>. A rescue officer so informed that breathing apparatus is not in full working order must either withdraw the breathing apparatus from service or rectify the fault and satisfy himself that the apparatus is in full working order<sup>29</sup>.

In rescue work and training for rescue work the number of specified audible signals<sup>30</sup> and no other must be used between the members of a rescue team below ground for the purposes specified in relation to them<sup>31</sup>. Those signals are to be effected by a whistle or other device which produces clearly audible signals<sup>32</sup>.

1    le the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, Pt IV (regs 15-27): see the text and notes 7-32. As to exemptions from the 1995 regulations see PARA 832 note 2.

2    See the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 3(3), cited in PARA 832 note 2 (where the definition of 'tourist mine' is set out).

3    As to the meaning of 'mine' for these purposes see PARA 832 note 2.

4    For these purposes, 'firedamp' means any flammable gas or any flammable mixture of gases occurring naturally in a mine: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

5    'Irrespirable atmosphere' means an atmosphere which it is unsafe for a person to breathe as a result of either oxygen depletion or the presence of toxic fumes or gases: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).

- 6 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 3(2). As to the meaning of 'breathing apparatus' see PARA 833 note 6.
- 7 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 15.
- 8 As to the meaning of 'manager' see PARA 832 note 1.
- 9 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 16(1).
- 10 As to registered medical practitioners and their qualifications see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 93 et seq.
- 11 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 16(2).
- 12 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 17.
- 13 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 18(1), (2).
- 14 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 19.
- 15 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 20.
- 16 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 21(1).
- 17 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 21(2).
- 18 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 22(1).
- 19 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 22(2).
- 20 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 23.
- 21 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 24.
- 22 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 25.
- 23 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 26(1). As to certification and fitness see reg 16(2)(a).
- 24 As to the meaning of 'owner' for these purposes see PARA 832 note 12.
- 25 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 26(2).
- 26 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 26(3).
- 27 'Fresh air base' means a place where the air is respirable as near as practicable to the place in which rescue work has to be carried out: Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 2(1).
- 28 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 26(4).
- 29 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 26(5).
- 30 Ie the signals specified in the Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 27(1), Schedule: see note 31.
- 31 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 27(1). The number of repetitions of the audible signal specified in the Schedule is as follows: (1) 'Distress' or 'Help wanted', one signal (if no answer is given to a call, 'Distress' is to be understood); (2) Halt, two signals; (3) Retire, three signals; (4) Advance, four signals; and (5) To call attention, five signals.
- 32 Escape and Rescue from Mines Regulations 1995, SI 1995/2870, reg 27(2).

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## **(ix) Training and Prohibited Conduct**

### **835. Training.**

No person may do any work at a mine<sup>1</sup> unless either (1) he has received adequate instruction in, or training for, that work and is competent; or (2) he does so under the instruction and supervision of some other person who is competent to give instruction and to supervise the doing of that work for the purpose of training him<sup>2</sup>.

The manager<sup>3</sup> of a mine must appoint a suitably qualified and competent person to organise and, where appropriate, undertake the training of persons at work at the mine and must afford that person such time and facilities and, where appropriate, support him by a sufficient number of suitably qualified and competent persons as will enable him to carry out his duties effectively<sup>4</sup>. The manager must consult with the person appointed to organise training and then prepare a suitable scheme specifying (a) the arrangements for (i) the supervision and training of persons without adequate experience of the work they will be called upon to do and (ii) the training of operators of plant and equipment; and (b) the reports and records of training to be made and kept at the mine or at some other place approved by the Health and Safety Executive<sup>5</sup>.

Subject to any instructions given to him by the manager, the person appointed to organise the training must implement the training scheme<sup>6</sup>, provide reports to the manager on the progress and welfare of trainees at suitable intervals and supply to each trainee a suitable record of the training he has received<sup>7</sup>.

1 As to the meaning of 'mine' see PARA 343 note 1.

2 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 23.

3 As to the manager of a mine see PARA 750 note 1.

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 24.

5 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 25. As to the Health and Safety Executive see PARA 361 et seq.

6 I.e. the scheme required under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 25: see the text and note 5.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 26.



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### **836. Qualifications.**

The Health and Safety Executive<sup>1</sup> may approve qualifications for the purposes of the Mines and Quarries Act 1954, regulations made under, or having effect as if made under, that Act and health and safety regulations which expressly apply to mines<sup>2</sup>. The possession of such a qualification must be attested by a valid certificate issued by the Executive or the body granting the qualification<sup>3</sup>. The certificate must state (1) the name of the body issuing it; (2) the name of the individual to whom it relates; (3) the purpose for which the certificate is granted; (4) that the body issuing the certificate is satisfied that the individual to whom the certificate relates has attained a satisfactory standard (whether by education, training or experience or a combination of them); (5) the period of validity of the certificate, if the certificate is so limited; (6) any conditions or restrictions that the issuing body sees fit to impose; and (7) the date of issue of the certificate<sup>4</sup>.

The Executive or other body empowered to issue certificates of qualification may decide to refuse to issue a certificate to a person and in such a case must notify that person of its decision to do so<sup>5</sup>. Where a person is aggrieved by a decision of the Executive or other body to refuse to issue a certificate of qualification, he may, by an application in writing to the Executive within 28 days of the date on which he was notified of the decision, apply for that decision to be reviewed in accordance with a procedure approved for that purpose by the Secretary of State and the Executive must notify him of the result of that review<sup>6</sup>.

If a certificate of qualification is lost, destroyed or defaced, the body issuing the certificate or, if that body has ceased to exist, the Executive, may, on such terms as to evidence as it sees fit (and in a case where the certificate is defaced, on its surrender) issue a new certificate to replace it<sup>7</sup>.

The expenses incurred by a person who is employed to perform supervisory duties below ground<sup>8</sup> or to inspect mines to ensure their safety for work<sup>9</sup> and necessary to maintain his certificate of qualification must be borne by the owner of the mine<sup>10</sup>.

1 As to the Health and Safety Executive see PARA 361 et seq.

2 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 17(1). As to the meaning of 'mine' see PARA 343 note 1; and as to health and safety regulations see PARA 424. Provision is made for certificates issued under the Mines and Quarries Act 1954 to remain valid: Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 19.

3 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 18(1).

4 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 18(2).

5 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 20(1).

6 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 20(2) (amended by virtue of SI 2008/960). As to the Secretary of State see PARA 349 et seq.

7 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 21.

8 I.e. under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 10(2)(a); see PARA 748.

9      le under the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 12(1); see PARA 753.

10     Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 22.

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### **837. Specific prohibitions.**

In addition to the duties imposed on employees<sup>1</sup> at work at mines<sup>2</sup> by the Management and Administration of Safety and Health at Mines Regulations 1993<sup>3</sup>, several specific prohibitions made by earlier regulations still apply.

At mines of coal, stratified ironstone, shale and fireclay, no person<sup>4</sup> may enter a cage unless authorised by the banksman or onsetter<sup>5</sup> or, when riding in a cage, interfere with or attempt to open the gates<sup>6</sup> or leave it until it is stationary at a landing place<sup>7</sup>. Except with authority or in case of emergency, no person employed at such a mine may travel to or from his work by any road<sup>8</sup> other than one notified by the manager for the purpose, or go into any part which it is unnecessary for him to enter for the purposes of his work<sup>9</sup>; and, except for the performance of his duties or with authority, no person may go into any engine house<sup>10</sup>. Except for certain purposes<sup>11</sup>, no loose material which is burning may be left unattended below ground<sup>12</sup>. No person may interfere with any machinery at a mine or operate any machinery required by or under the Mines and Quarries Act 1954 or by the manager of the mine to be operated in compliance with signals or which if not so required is capable of developing more than 7.5 kilowatts except (1) a mechanic or electrician of the mine; (2) a person carrying out duties in relation thereto in pursuance of an instruction in writing by the manager; (3) in emergency for the purpose of cutting off the supply of power<sup>13</sup>.

At mines other than mines of coal, stratified ironstone, shale or fireclay, no person may travel by means of an aerial ropeway, except with authority<sup>14</sup>; no person employed may travel below ground to or from his work by a road other than one notified by the manager for the purpose or go into any part which it is not necessary for him to enter for the purpose of his work<sup>15</sup>. No person may work on any ledge or other place which is unfenced and from which he might fall 4.5 metres or more unless he has been supplied with a rope or other safety appliance and he has at the beginning of his work satisfied himself of its safety and he is secured by it<sup>16</sup>. The duties of persons who open or move ventilating doors, screens or sheets have already been mentioned<sup>17</sup>.

1 As to the meaning of 'employee' see PARA 302 note 4.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 I.e. the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 5: see PARA 751.

4 It is submitted that 'no person' and 'every person', without qualification, apply to all persons whatever, whether employed or not.

5 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 3(1) (contained in the Coal and Other Mines (General Duties and Conduct) Order 1956, SI 1956/1761, Sch 1). The regulations apply to every mine of coal, stratified ironstone, shale or fireclay (reg 1) and have effect as if made under the Mines and Quarries Act 1954 s 141, which was repealed by the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974, SI 1974/2013, reg 2(1)(a), Sch 1 Pt I, but the regulations continue in force notwithstanding the repeal: reg 7(3). This does not apply to a person authorised to transmit signals when he is at an underground entrance to a shaft and no onsetter is present: Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 3(3).

- 6 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 3(2)(a). This does not apply in the circumstances detailed in note 5: reg 3(3).
- 7 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 3(2)(b).
- 8 As to the meaning of 'road' see PARA 759.
- 9 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 4(1).
- 10 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 4(3).
- 11 In pursuance of the Mines and Quarries Act 1954 s 79: see PARA 830. Section 80, referred to in the Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 8(2), is repealed but no consequential amendment is made.
- 12 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 8(2).
- 13 Coal and Other Mines (General Duties and Conduct) Regulations 1956 reg 6(1) (amended by SI 1978/1648). As to electricity and electrical apparatus at mines see PARA 805.
- 14 Miscellaneous Mines (General) Regulations 1956 reg 63 (contained in the Miscellaneous Mines Order 1956, SI 1956/1778, Sch 1).
- 15 Miscellaneous Mines (General) Regulations 1956 reg 64.
- 16 Miscellaneous Mines (General) Regulations 1956 reg 68 (amended by SI 1983/994).
- 17 See the Miscellaneous Mines (General) Regulations 1956 reg 65; and PARA 793.

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## **(8) QUARRIES**

### **838. Introduction; meaning of 'quarry'.**

The Quarries Regulations 1999<sup>1</sup> now govern health and safety in quarries. For the purposes of those regulations, 'quarry' means:

- 1708 (1) subject to certain exceptions<sup>2</sup>, an excavation<sup>3</sup> or system of excavations made for the purpose of, or in connection with, the extraction of minerals<sup>4</sup>, whether in their natural state or in solution or suspension, or products of minerals, being neither a mine<sup>5</sup> nor merely a well or borehole or a well and borehole combined;
- 1709 (2) any reclamation site<sup>6</sup> from which minerals are being extracted for sale or further use; or
- 1710 (3) any disused tip<sup>7</sup> which is not at a mine being worked<sup>8</sup> from which minerals are being extracted for sale or further use<sup>9</sup>.

For those purposes, the following are to be deemed to form part of a quarry:

- 1711 (a) so much of the surface, including buildings, structures and works thereon, surrounding or adjacent to the quarry as is occupied for the purpose of, or in connection with:
  - 330 49. (i) the working of the quarry;
  - 50. (ii) the consumption, use, storage or preparation for sale of the minerals or products thereof extracted from the quarry; or
  - 51. (iii) the removal from the quarry of any substance extracted from the quarry; and
- 331 1712 (b) any tip:
  - 332 52. (i) for the time being used in conjunction or connection with the operation of the quarry; or
  - 53. (ii) subject to certain exceptions<sup>10</sup>, and whether or not it is for the time being in use, situated on premises occupied by the operator<sup>11</sup> of the quarry<sup>12</sup>.
- 333

Subject to the following provisions, and save where the contrary intention appears, the 1999 regulations apply to all quarries where persons work<sup>13</sup>. They do not, however apply to:

- 1713 (A) a quarry at which there has been no extraction or preparation for sale<sup>14</sup> of minerals within the previous 12 months;
- 1714 (B) a quarry in relation to which notice of abandonment or ceasing of operations has been given to the Health and Safety Executive<sup>15</sup>, provided that the quarry is no longer being used for the extraction or preparation for sale of minerals; or

- 1715 (c) part of a quarry which is being used exclusively by a person for a work activity unconnected with the extraction of minerals or the preparation for sale of minerals,

provided that no specified work activity<sup>16</sup> is being carried on at that quarry<sup>17</sup>.

The 1999 regulations apply to a self-employed person as they apply to an employer and as if that self-employed person were both an employer and a person at work<sup>18</sup>.

The Executive may, by a certificate in writing, exempt any quarry, part of a quarry or class of quarries, any person or class of persons, any plant or class of plant or any operation or class of operations from all or any of the prohibitions and requirements of the 1999 regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing<sup>19</sup>. The Executive may not, however, grant any such exemption unless, having regard to the circumstances of the case and in particular to the conditions, if any, it proposes to attach to the exemption and to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it<sup>20</sup>.

Part VI of the Quarries Regulations 1999<sup>21</sup>, which relates to excavations and tips, is set out elsewhere in this work<sup>22</sup>. The remaining provisions of those regulations are discussed below<sup>23</sup>.

The regulations are supported by an approved code of practice and guidance<sup>24</sup>.

1 The Quarries Regulations 1999, SI 1999/2024, which came into force (except for certain provisions in reg 32 relating to tips) on 1 January 2000: reg 1(1). As to the coming into force of reg 32 on either 1 January 2001 or 1 January 2002 see reg 1(2), (3); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 556.

2 Notwithstanding the Quarries Regulations 1999, SI 1999/2024, reg 3(1)(a) (see head (1) in the text), for these purposes 'quarry' does not include (1) an excavation or system of excavations made for the purpose of or in connection with the extraction of such minerals or products of minerals where the exclusive purpose of that extraction is to enable the minerals or products of minerals so extracted to be used for the purpose of carrying out any building, civil engineering or engineering construction work on the site at which the extraction has taken place; (2) a public road; or (3) a railway line which is exclusively under the control of (a) a railway company; or (b) a person who carries on an undertaking which consists of, or the main activity or one of the main activities of which consists of, the management of a network within the meaning of the Railways Act 1993 s 83(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 82): Quarries Regulations 1999, SI 1999/2024, reg 3(2). 'Public road' means, in England and Wales, a highway maintainable at public expense within the meaning of the Highways Act 1980 s 329 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248); and 'railway company' means any person authorised by an enactment to construct, work or carry on a railway and for the purposes of this definition the expression 'enactment' includes a provision of an order or scheme made under or confirmed by an Act: Quarries Regulations 1999, SI 1999/2024, reg 2(1). As to the meanings of 'excavation' and 'minerals' see notes 3-4.

3 'Excavation' means any place at the quarry where minerals are or have been extracted and includes the ground, faces or sides of the quarry and any other incline: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

4 'Minerals' includes stone, slate, clay, gravel, sand and other natural deposits except peat: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

5 'Mine' means any mine within the meaning of the Mines and Quarries Act 1954 (see PARA 343 note 1): Quarries Regulations 1999, SI 1999/2024, reg 2(1). As to health and safety in mines see PARA 748 et seq.

6 For this purpose 'reclamation site' means a site where the extraction of minerals forms part of the process whereby that site is restored for agricultural, industrial or domestic use: Quarries Regulations 1999, SI 1999/2024, reg 3(1)(b).

7 'Tip' means an accumulation or deposit of any substance at a quarry (whether in a solid or liquid state or in solution or suspension) and includes, but is not limited to, over-burden dumps, backfill, spoil heaps, stock piles and lagoons, and where any wall or other structure retains or confines a tip then it is to be deemed to form part of the tip: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

8 le worked within the meaning of the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 2(3): see PARA 748 note 6.

9 Quarries Regulations 1999, SI 1999/2024, reg 3(1).

10 le subject to the Quarries Regulations 1999, SI 1999/2024, reg 3(4)(a); see note 12.

11 'Operator' in relation to a quarry means the person in overall control of the working of the quarry: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

12 Quarries Regulations 1999, SI 1999/2024, reg 3(3). For these purposes, where (1) a tip is for the time being used in conjunction or connection with the operation of two or more quarries and is situated on premises occupied exclusively by the operator of one of those quarries, it is to be treated as forming part of that quarry unless (a) the operator of one of the other quarries in conjunction or connection with which the tip is for the time being used has agreed that the tip should be treated as forming part of the quarry of which he is the operator; and (b) notice to that effect has been given to the Health and Safety Executive by that operator; (2) a tip is for the time being used in conjunction or connection with the operation of two or more quarries and is situated on premises occupied jointly by the operators of two or more of those quarries, the last-named operators are, for these purposes, to be treated as being in joint and several control of that tip and as being jointly and severally responsible therefor unless (a) those operators have agreed that one of their number should be treated as being in control of that tip and responsible therefor; and (b) notice to that effect has been given to the Executive by the operator who is to be so treated: reg 3(4). Upon receipt of a notice given in accordance with reg 3(4)(a)(ii) or (4)(b)(ii) (see heads (1)(b), (2)(b) above), the tip named in that notice is to be treated as forming part of the quarry specified in that notice: reg 3(5). As to the Health and Safety Executive see PARA 361 et seq.

13 Quarries Regulations 1999, SI 1999/2024, reg 4(1).

14 'Preparation for sale' includes the crushing, screening, washing, drying and bagging of minerals: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

15 le in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 45(1). It is the duty of the operator to ensure that within 14 days of any of the events specified in reg 45(2)(a)-(c), written notice thereof is given to the Executive: reg 45(1). The events referred to at reg 45(1) are (1) the beginning of operations for the purpose of opening a quarry; (2) the abandonment of or ceasing of operations at a quarry; and (3) the appointment or change of the operator of a quarry: reg 45(2). Without prejudice to the duty to give notice under reg 45(1) in respect of an event specified at reg 45(2)(b), the operator of every quarry of coal must, within three months of the date on which the quarry of coal is abandoned, send to the Executive, or a body approved by it, an accurate plan of that quarry: reg 45(3). Where, in pursuance of reg 45(3), a plan has been sent to the Executive or a body approved by it, that plan must be retained by the Executive or that body in accordance with arrangements approved by the Executive: reg 45(4) (amended by SI 2002/2174).

16 le no work activity set out in the Quarries Regulations 1999, SI 1999/2024, reg 4(3). The work activities so mentioned are any work carried on (1) with a view to abandoning that quarry; or (2) for the purpose of preventing the flow from that quarry into an adjacent quarry of water or material that flows when wet: reg 4(3).

17 Quarries Regulations 1999, SI 1999/2024, reg 4(2).

18 Quarries Regulations 1999, SI 1999/2024, reg 4(4). As to the meaning of 'self-employed person' see PARA 302 note 5.

19 Quarries Regulations 1999, SI 1999/2024, reg 46(1).

20 Quarries Regulations 1999, SI 1999/2024, reg 46(2).

21 le the Quarries Regulations 1999, SI 1999/2024, Pt VI (regs 30-38, Sch 1).

22 See **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 552 et seq.

23 See PARA 839 et seq.

24 See the Approved Code of Practice on Health and Safety at Quarries (L118). As to codes of practice approved by the Health and Safety Executive see PARA 426.

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### **839. Health and safety management.**

The person entitled to work a quarry<sup>1</sup> must not permit another person to be the operator<sup>2</sup> of that quarry unless that person is suitable and has sufficient resources to be able to operate the quarry safely<sup>3</sup>. Where the person entitled to work a quarry permits another person to be the operator of that quarry, he must make a written record of that permission; and that record must be signed by the person so entitled and the operator and a copy of it must be provided to the operator<sup>4</sup>. That record and copy must be kept by the person so entitled and the operator respectively for the duration of that permission<sup>5</sup>. The person so entitled must provide the operator with any relevant information available to him which might affect the health and safety of persons at work at the quarry<sup>6</sup>.

It is the duty of the operator of every quarry to take the necessary measures to ensure, so far as is reasonably practicable<sup>7</sup>, that the quarry and its plant are designed, constructed, equipped, commissioned, operated and maintained<sup>8</sup> in such a way that persons at work can perform the work assigned to them without endangering their own health and safety or the health and safety of others<sup>9</sup>. The operator must co-ordinate the implementation of all measures relating to the health and safety of persons at work at the quarry<sup>10</sup>. Where necessary to ensure the health and safety of any person the operator must<sup>11</sup> ensure that any building, whether temporary or permanent, or structure is designed, constructed, erected, operated, supervised and maintained so as to withstand any reasonably foreseeable environmental forces and has a construction and solidity which is appropriate to the nature of its use<sup>12</sup>. The operator must ensure that in the event of the abandonment of or ceasing of operations at a quarry, the quarry is left, so far as is reasonably practicable, in a safe condition<sup>13</sup>.

The operator must ensure that no work is carried out at the quarry unless a document (the 'health and safety document') has been prepared which:

- 1716 (1) demonstrates that the risks to which persons at work at the quarry are exposed have been assessed<sup>14</sup>;
- 1717 (2) demonstrates that adequate measures, including measures concerning the design, use and maintenance of the quarry and of its plant, will be taken to safeguard the health and safety of persons at the quarry and in the area immediately surrounding the quarry who are directly affected by the activities of the quarry;
- 1718 (3) includes a statement of how the measures referred to in head (2) above will be co-ordinated;
- 1719 (4) gives details of the management structure<sup>15</sup> and sets out the authority and duties of each person in the management structure; and
- 1720 (5) records the specified information<sup>16</sup>.

In addition to the matters referred to in heads (1) to (5) above, the health and safety document must where appropriate also include:

- 1721 (a) a plan detailing the equipment and measures required to protect persons at work at the quarry from the risk of explosion;
- 1722 (b) where toxic gases are or may be present in the atmosphere at the quarry in such concentration that the atmosphere may be harmful to the health of persons



- at work, a plan detailing the protective equipment and measures required to protect persons at work at the quarry from the harmful atmosphere; and
- 1723 (c) a diagram of the quarry indicating those areas to which the relevant regulations<sup>17</sup> do not apply by virtue of the prescribed exception<sup>18</sup> for parts of the quarry being used exclusively by a person for a work activity unconnected with the extraction of minerals or the preparation for sale of minerals<sup>19</sup>.

The operator must ensure that the health and safety document, including any information recorded in it pursuant to head (5) above, is kept up to date and is made available to each employer<sup>20</sup> of persons at work at the quarry and to all persons at work at the quarry<sup>21</sup>. The operator must also ensure that the measures identified in the health and safety document are taken and that any plans included in that document are followed<sup>22</sup>. Each person in the management structure must carry out the duties assigned to him in the health and safety document so as to protect the health and safety of persons at work at the quarry<sup>23</sup>.

With a view to ensuring the health, safety and welfare of those persons identified in head (2) above, it is the duty of the operator to:

- 1724 (i) establish a management structure which enables the quarry to be operated in accordance with the health and safety document;
- 1725 (ii) make a record of the management structure and the extent of the authority and duties of persons in that structure;
- 1726 (iii) appoint a competent individual to take charge<sup>24</sup> of the operation of the quarry at all times when persons are working in the quarry, provided that where the operator is an individual and is suitably qualified and competent he may appoint himself;
- 1727 (iv) ensure that when, for whatever reason, the individual appointed in accordance with head (iii) above is not readily available, a competent individual is nominated as a substitute to hold the authority and perform the duties of the first named individual; and
- 1728 (v) ensure that a sufficient number of competent persons are appointed to manage the quarry safely<sup>25</sup>.

The management structure must<sup>26</sup> be established to provide in particular that all persons working at the quarry come under the authority of a competent person in the management structure who is to have a duty to exercise such supervision of those persons as is appropriate to ensure the health and safety of those persons and of all others who may be affected by their activities<sup>27</sup>. The operator must ensure that the management structure is reviewed regularly and revised where necessary and in particular if the quarry undergoes significant changes, including natural changes, extensions or conversions<sup>28</sup>. The operator must ensure that each person who forms part of the management structure is provided with a copy of those parts of the health and safety document which describe his authority and duties<sup>29</sup>.

The operator must ensure that no person undertakes any work at the quarry unless that person is either competent to do that work or he does so under the instruction and supervision of some other person who is competent to give instruction in and to supervise the doing of that work for the purpose of training him and unless a sufficient number of persons with the requisite competence to perform the tasks assigned to them are present<sup>30</sup>.

It is the duty of the operator to:

- 1729 (A) ensure that rules are in place at the quarry with a view to securing the health and safety of those persons identified in head (2) above and the safe use of equipment;

- 1730 (b) ensure that copies of all current instructions, rules and schemes required to be made under the relevant regulations<sup>31</sup> are kept at the quarry and are given to any person at work at the quarry upon whom they impose duties and are comprehensible to all persons at work at the quarry to whom they apply; and
- 1731 (c) take all reasonable measures to ensure that each person at work at the quarry understands any rules required to be made under those regulations which are relevant to that person<sup>32</sup>.

The operator must ensure, so far as is reasonably practicable, that any instructions, rules and schemes required to be made under the relevant regulations are followed, or as the case may be, complied with, by persons at work at the quarry<sup>33</sup>.

The operator must ensure that the measures taken to protect the health and safety of those persons identified in head (2) above are reviewed on a regular basis to ensure compliance with the relevant statutory provisions, and whenever the circumstances require it, including where there has been a significant change in the way that the quarry operates<sup>34</sup>. The operator must also ensure that the regularity with which such reviews are to take place is specified in the health and safety document<sup>35</sup>.

It is the duty of the operator to ensure that every report or record which is required to be made<sup>36</sup> is in a suitable form and is kept at the quarry or at some other suitable place for at least three years from the date on which the report or record was made unless the provision concerned expressly imposes some other requirement<sup>37</sup>. It is also the duty of the operator to ensure that a copy of the written statement of duties of all persons appointed at the quarry<sup>38</sup> is kept at the quarry or at some other suitable place for at least 12 months after the date on which the appointment ceased to have effect<sup>39</sup>.

1 As to the meaning of 'quarry' see PARA 838.

2 As to the meaning of 'operator' see PARA 838 note 11.

3 Quarries Regulations 1999, SI 1999/2024, reg 5(1).

4 Quarries Regulations 1999, SI 1999/2024, reg 5(2).

5 Quarries Regulations 1999, SI 1999/2024, reg 5(3).

6 Quarries Regulations 1999, SI 1999/2024, reg 5(4).

7 As to what is reasonably practicable see PARA 417.

8 'Maintained' with respect to the quarry and its plant means maintained, where necessary to secure the health and safety of any person, in an efficient state, in efficient working order and in good repair, and 'maintenance' is to be construed accordingly: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

9 Quarries Regulations 1999, SI 1999/2024, reg 6(1).

10 Quarries Regulations 1999, SI 1999/2024, reg 6(2).

11 I.e. without prejudice to the generality of the Quarries Regulations 1999, SI 1999/2024, reg 6(1).

12 Quarries Regulations 1999, SI 1999/2024, reg 6(3).

13 Quarries Regulations 1999, SI 1999/2024, reg 6(4).

14 I.e. assessed in accordance with the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3: see PARA 429.

15 'Management structure' is to be construed in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 8 (see the text and notes 24-29): reg 2(1).

16 Quarries Regulations 1999, SI 1999/2024, reg 7(1) (amended by SI 1999/3242). The information referred to in the text is as follows: (1) the rules required by the Quarries Regulations 1999, SI 1999/2024, reg 10(1)(a) (see the text and notes 31-32); (2) the arrangements for the review of safety measures in accordance with reg 11 (see the text and notes 34-35); (3) details of the inspection, maintenance and testing schemes prepared in accordance with reg 12 (see PARA 840); (4) the rules controlling risks from vehicles required by reg 14 (see PARA 840); (5) details of the permit to work system required by reg 18 (see PARA 841); (6) the shotfiring rules required by reg 25(2) (see PARA 842); (7) the excavations and tips rules required by reg 31 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 555); (8) the conclusions of any appraisal or assessment of an excavation or tip undertaken in accordance with reg 32 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 556); and (9) the arrangements for health surveillance required by reg 43 (see PARA 843): reg 7(1)(e).

17 Ie the Quarries Regulations 1999, SI 1999/2024.

18 Ie by virtue of the Quarries Regulations 1999, SI 1999/2024, reg 4(2)(c): see PARA 838.

19 Quarries Regulations 1999, SI 1999/2024, reg 7(2).

20 As to the application of the 1999 regulations to self-employed persons see PARA 838.

21 Quarries Regulations 1999, SI 1999/2024, reg 7(3).

22 Quarries Regulations 1999, SI 1999/2024, reg 7(4).

23 Quarries Regulations 1999, SI 1999/2024, reg 7(5).

24 The reference in the text to a competent individual taking charge is a reference to that individual taking charge subject to the overall control exercised by the operator: Quarries Regulations 1999, SI 1999/2024, reg 8(5). 'Competent' in relation to a person means a person with sufficient training, experience, knowledge and other qualities to enable him properly to undertake the duties assigned to him, and 'competence' is to be construed accordingly: reg 2(1).

25 Quarries Regulations 1999, SI 1999/2024, reg 8(1).

26 Ie without prejudice to the generality of the Quarries Regulations 1999, SI 1999/2024, reg 8(1).

27 Quarries Regulations 1999, SI 1999/2024, reg 8(2).

28 Quarries Regulations 1999, SI 1999/2024, reg 8(3).

29 Quarries Regulations 1999, SI 1999/2024, reg 8(4).

30 Quarries Regulations 1999, SI 1999/2024, reg 9.

31 See note 17.

32 Quarries Regulations 1999, SI 1999/2024, reg 10(1).

33 Quarries Regulations 1999, SI 1999/2024, reg 10(2).

34 Quarries Regulations 1999, SI 1999/2024, reg 11(a).

35 Quarries Regulations 1999, SI 1999/2024, reg 11(b).

36 Ie required to be made under the Quarries Regulations 1999, SI 1999/2024.

37 Quarries Regulations 1999, SI 1999/2024, reg 44(1)(a). Regulation 44(1)(a) applies to copies of information notified to the Health and Safety Executive under the 1999 regulations but does not apply to the record made in accordance with reg 5(2) by the person entitled to work the quarry: reg 44(2). As to the Health and Safety Executive see PARA 361 et seq.

38 Ie appointed under the Quarries Regulations 1999, SI 1999/2024.

39 Quarries Regulations 1999, SI 1999/2024, reg 44(1)(b).

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#### **840. Risk control.**

The operator<sup>1</sup> must prepare and keep up to date a suitable written scheme for the systematic inspection<sup>2</sup>, maintenance<sup>3</sup> and, where appropriate, testing of:

- 1732 (1) all parts of the quarry<sup>4</sup>;
- 1733 (2) all buildings, whether temporary or permanent, at the quarry; and
- 1734 (3) any plant at the quarry,

with a view to securing the health and safety of persons at the quarry and in the area immediately surrounding the quarry who are directly affected by the activities of the quarry<sup>5</sup>. The operator must also ensure that, where appropriate, suitable written reports are made of inspections, maintenance and tests carried out in pursuance of heads (1) to (3) above and that each report records significant defects and the steps taken to remedy them and is signed by the person making it and countersigned by an appropriate person in the management structure<sup>6</sup>.

The operator must ensure that a sufficient number of competent persons are appointed<sup>7</sup> to undertake the activities referred to above<sup>8</sup>.

The operator must ensure, so far as is reasonably practicable<sup>9</sup>, that:

- 1735 (a) benches and haul roads are designed, constructed and maintained so as to allow vehicles<sup>10</sup> and plant to be used and moved upon them safely; and
- 1736 (b) where necessary, effective precautions are taken, by the installation of barriers or otherwise, to prevent vehicles or plant accidentally leaving any bench or haul road<sup>11</sup>.

The operator must make suitable and sufficient rules (the 'vehicles rules') which must lay down in writing measures designed to control the risks to persons at the quarry arising from the use of vehicles at the quarry<sup>12</sup>.

The operator must ensure that:

- 1737 (i) adequate means of escape and rescue are provided and maintained so as to permit persons in the quarry to leave the quarry promptly and safely in the event of danger;
- 1738 (ii) adequate means of communication and warning are provided to enable assistance, escape and rescue operations to be launched at once when required;
- 1739 (iii) written instructions concerning the use of emergency equipment and the action to be taken in the event of an emergency at or near the quarry are prepared;
- 1740 (iv) persons at work at the quarry are trained in appropriate action to be taken in the event of an emergency; and
- 1741 (v) rescue equipment is provided at readily accessible, appropriately sited and clearly sign-posted places and kept ready for use<sup>13</sup>.

The operator must ensure that, where appropriate, a barrier suitable for the purpose of discouraging trespass is placed around the boundary of the quarry and is properly maintained<sup>14</sup>.

1 As to the meaning of 'operator' see PARA 838 note 11.

2 For these purposes, 'inspection' means such visual or more rigorous inspection by a competent person as is appropriate for the purpose: Quarries Regulations 1999, SI 1999/2024, reg 12(3). As to the meaning of 'competent' see PARA 839 note 24.

3 As to the meaning of 'maintenance' see PARA 839 note 8.

4 As to the meaning of 'quarry' see PARA 838.

5 Quarries Regulations 1999, SI 1999/2024, reg 12(1)(a). The persons referred to in the text are those persons identified in reg 7(1)(b)(i), (ii): see PARA 839 head (2).

Without prejudice to the generality of reg 12(1)(a) and (b), the written scheme must specify that faces above (1) every place of work at the quarry; and (2) every road used by persons at work at the quarry for the purpose of their work or of getting to or from their place of work, are inspected for loose ground or loose rocks before any work at the quarry commences or re-commences: reg 12(2).

6 Quarries Regulations 1999, SI 1999/2024, reg 12(1)(b).

7 'Appoint' in relation to a person means appoint in writing with a written statement summarising his duties and authority, and 'appointed' is to be construed accordingly: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

8 Quarries Regulations 1999, SI 1999/2024, reg 12(1)(c).

9 As to what is reasonably practicable see PARA 417.

10 'Vehicle' means any mechanically propelled vehicle (including mechanically propelled plant): Quarries Regulations 1999, SI 1999/2024, reg 2(1).

11 Quarries Regulations 1999, SI 1999/2024, reg 13.

12 Quarries Regulations 1999, SI 1999/2024, reg 14.

13 Quarries Regulations 1999, SI 1999/2024, reg 15.

14 Quarries Regulations 1999, SI 1999/2024, reg 16.

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#### **841. Additional health and safety requirements.**

The operator<sup>1</sup> must ensure that the following provisions are in each case complied with as appropriate having regard to the features of the quarry<sup>2</sup>, the nature and circumstances of the work carried on there or to a specific risk<sup>3</sup>.

The operator must ensure that a system is in place so as to ensure that any work involving the carrying out of hazardous operations or of usually straightforward operations which may interact with other activities to cause serious hazards<sup>4</sup>, is not carried out unless a permit to carry out that work has been issued<sup>5</sup>. Such permits to work must specify the conditions to be fulfilled and the precautions to be taken before, during and after the operation concerned, in order to ensure, so far as is reasonably practicable<sup>6</sup>, the health and safety of any person affected by that operation<sup>7</sup>. They must be issued, signed and dated by a suitable person in the management structure<sup>8</sup> and then accepted, signed and dated by a further suitable person<sup>9</sup>.

The operator must ensure that safety drills are held at regular intervals for persons at work at the quarry<sup>10</sup>.

The operator must ensure that no person at work at the quarry uses a naked flame or carries out any work which could give rise to a risk of an unintended explosion or fire unless sufficient measures to prevent such an explosion or fire are taken<sup>11</sup>. No person must smoke in any part of a quarry where there is a risk of fire or explosion<sup>12</sup>.

It is the duty of the operator to ensure that:

1742 (1) steps are taken in order to determine whether potentially explosive substances<sup>13</sup> are present in the atmosphere and, where such substances are present, to measure the concentration of such substances in the atmosphere;

1743 (2) automatic devices are provided which are designed to:

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54. (a) monitor continuously the concentration of explosive or flammable gases in the atmosphere;

55. (b) trigger an alarm if such concentration reaches a dangerous level; and

56. (c) cut off power to any plant which, because of the concentration of such gases in the atmosphere, gives rise to a risk to the health and safety of any person;

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1744 (3) where devices are provided in accordance with head (2)(a) above, a record of the levels of concentration of such gases in the atmosphere are made at such intervals as are specified in the health and safety document<sup>14</sup>;

1745 (4) at any place in the quarry where there is a risk of the occurrence or accumulation of an explosive atmosphere, all necessary measures are taken with a view to preventing such occurrence and accumulation, or, where this is not practicable, preventing the ignition of such an atmosphere; and

1746 (5) at any place in the quarry where there is a risk of the occurrence or accumulation of a substance harmful to health in the atmosphere, appropriate measures are taken in order to prevent such occurrence and accumulation, or, where this is not practicable, to extract or disperse that harmful substance, in such a way that persons are not placed at risk<sup>15</sup>.

The operator must<sup>16</sup> ensure that whenever persons at work are present at any place in the quarry where they may be exposed to a substance harmful to health in the atmosphere, appropriate and sufficient breathing and resuscitation equipment is available and a sufficient number of persons trained in the use of such equipment is present<sup>17</sup>; and must ensure that that equipment is suitably stored and maintained<sup>18</sup>.

The operator must ensure that:

- 1747 (i) any danger areas in the quarry are clearly marked;
- 1748 (ii) equipment or barriers designed to prevent inadvertent entry by any unauthorised person are installed at any danger area in the quarry in which, because of the nature of the work being carried out there or for any other reason, there is risk of a person falling a distance likely to cause personal injury, risk of a person being struck by a falling object likely to cause personal injury, or a significant risk to the health and safety of persons; and
- 1749 (iii) where any person at work is authorised to enter a danger area, appropriate measures are taken to protect his health and safety<sup>19</sup>.

The operator must ensure that every part of a quarry in which a person is likely to be exposed to risks in the event of the failure of artificial lighting is provided with emergency lighting of adequate intensity and where that is impractical persons at work in that place must be provided with a personal lamp<sup>20</sup>.

1 As to the meaning of 'operator' see PARA 838 note 11.

2 As to the meaning of 'quarry' see PARA 838.

3 Quarries Regulations 1999, SI 1999/2024, reg 17.

4 'Hazard' in relation to an excavation or tip means having the potential to cause harm to the health and safety of any person: Quarries Regulations 1999, SI 1999/2024, reg 2(1). As to the meanings of 'excavation' and 'tip' see PARA 838 notes 3, 7.

5 Quarries Regulations 1999, SI 1999/2024, reg 18(1).

6 As to what is reasonably practicable see PARA 417.

7 Quarries Regulations 1999, SI 1999/2024, reg 18(2).

8 'Management structure' is to be construed in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 8 (see PARA 839): reg 2(1).

9 Quarries Regulations 1999, SI 1999/2024, reg 18(3).

10 Quarries Regulations 1999, SI 1999/2024, reg 19(1). Such safety drills are to be for the following purposes: (1) to train the persons who work at the quarry in the appropriate actions to be taken in an emergency including, where appropriate, the correct use, handling or operation of emergency equipment; and (2) to train and check the skills of such persons to whom specific duties involving the use, handling or operation of such equipment have been assigned in the event of an emergency: reg 19(2).

11 Quarries Regulations 1999, SI 1999/2024, reg 20(1).

12 Quarries Regulations 1999, SI 1999/2024, reg 20(2).

13 'Explosive substance' means (1) a solid or liquid substance; or (2) a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions: Quarries Regulations 1999, SI 1999/2024, reg 2(1) (definition substituted by SI 2002/2174).

14 'Health and safety document' is to be construed in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 7 (see PARA 839): reg 2(1).

15 Quarries Regulations 1999, SI 1999/2024, reg 21(1).

16 le without prejudice to the requirements of the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966: see PARA 523 et seq.

17 Quarries Regulations 1999, SI 1999/2024, reg 21(2).

18 Quarries Regulations 1999, SI 1999/2024, reg 21(3).

19 Quarries Regulations 1999, SI 1999/2024, reg 22.

20 Quarries Regulations 1999, SI 1999/2024, reg 23.



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#### **842. Storage, transport and use of explosives.**

The following provisions apply to the storage, transport and use of explosives<sup>1</sup> at a quarry<sup>2</sup>.

The operator<sup>3</sup> must:

- 1750 (1) ensure, so far as is reasonably practicable<sup>4</sup>, that all explosives are stored, transported and used safely and securely;
- 1751 (2) appoint<sup>5</sup> one or more competent<sup>6</sup> individuals to organise and supervise all work at the quarry involving the use of explosives (the 'explosives supervisor'); and
- 1752 (3) ensure that at no time is there more than one person acting as the explosives supervisor at the quarry<sup>7</sup>.

It is the duty of the operator to ensure that:

- 1753 (a) suitable and sufficient rules are made which lay down in writing procedures for:

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- 57. (i) shotfiring operations<sup>8</sup> at the quarry;
- 58. (ii) appointing shotfirers<sup>9</sup>, trainee shotfirers<sup>10</sup> and storekeepers;
- 59. (iii) authorising other persons who will be involved with the storage, transport or use of explosives;
- 60. (iv) dealing with misfires<sup>11</sup>; and
- 61. (v) ensuring, so far as is reasonably practicable, that such rules are complied with;

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- 1754 (b) an adequate written specification, whether produced by him or not, is prepared for each shotfiring operation at the quarry to ensure, so far as is reasonably practicable, that when such firing occurs it will not give rise to danger; and
- 1755 (c) a copy of that specification is given to any person upon whom it imposes duties<sup>12</sup>.

The operator must ensure that operations involving the storage, transport or use of explosives are carried out by a duly authorised and competent person or a trainee under the close supervision of a duly authorised and competent person<sup>13</sup>. The operator must also ensure that:

- 1756 (A) such facilities and equipment as are necessary to enable shotfiring operations to be carried out safely are provided;
- 1757 (B) any vehicle<sup>14</sup> which is provided for use in relation to shotfiring operations is so marked as to be readily identifiable from a distance;
- 1758 (C) detonators<sup>15</sup> are stored in separate containers from other explosives; and
- 1759 (D) explosives are kept at all times either in a locked explosives store<sup>16</sup> or under the constant supervision of a suitable person<sup>17</sup>.

The operator must ensure, so far as is reasonably practicable, that each shotfiring operation is carried out safely and in accordance with the rules required to be made in pursuance of head (a) above and any specification required to be prepared in pursuance of head (b) above<sup>18</sup>.

The operator must take all reasonable steps to ensure that a trainee shotfirer at the quarry does not fire shots and is not required to fire shots, except when he is under the close personal supervision of a shotfirer, until the operator is satisfied that he has completed a suitable period of training and has appropriate practical experience, and that all shotfiring operations are carried out under the close personal supervision of the shotfirer<sup>19</sup>. The operator must ensure that a record of the appointment at the quarry of any shotfirer or trainee shotfirer is kept at a suitable place until three years after that shotfirer's or, as the case may be, trainee shotfirer's employment at the quarry ends<sup>20</sup>.

Before a shot is fired, a shotfirer must:

- 1760 (aa) check the shotfiring system or circuit to ensure that it has been connected correctly;
- 1761 (bb) where electrical detonators are used, ensure that they have been correctly connected to the shotfiring system or circuit and that the shotfiring system or circuit is tested with an instrument suitable for the purpose from a position of safety;
- 1762 (cc) where appropriate, ensure that the electrical integrity of the shotfiring system or circuit is such as to make a misfire unlikely; and
- 1763 (dd) ensure that the shot is fired from a safe place<sup>21</sup>.

In the event of a misfire the operator must, if this is not the same person, consult the individual appointed to be in charge of the operation of the quarry<sup>22</sup> and must ensure, so far as is reasonably practicable, that apart from himself, no person other than the explosives supervisor, shotfirer, trainee shotfirer or any other person authorised by him enters the danger area until the prescribed period has elapsed<sup>23</sup>. The operator must also ensure, so far as is reasonably practicable, that appropriate steps are taken to determine the cause of and to deal with the misfire<sup>24</sup> and that a suitable record is kept of the misfire<sup>25</sup>.

No person, other than a person engaged in the transport of explosives to or from the quarry, a shotfirer, trainee shotfirer, a person authorised to handle explosives at a quarry, or a person appointed to be in charge of the explosives store, must handle explosives at a quarry<sup>26</sup>.

No person may bring any substance or article, other than explosives, likely to cause an unintended explosion or fire within 10 metres of any explosives or, except for the purpose of lighting igniter cord or safety fuse<sup>27</sup>, take any naked flame within 10 metres of any explosives<sup>28</sup>. Nor may any person forcibly remove any detonator lead, safety fuse or other system for initiating shots from a shothole after the shothole has been charged and primed<sup>29</sup>.

No person may charge or fire a shot unless there is sufficient visibility to ensure that work preparatory to shotfiring, the shotfiring operation and any site inspection after the shot is fired can be carried out safely<sup>30</sup>. Nor may any person charge or fire a shot in a shothole which has previously been fired, unless he is dealing with a misfire<sup>31</sup>, or in any tunnel or other excavation, not being merely a shothole, in the face or side of the quarry for the purpose of extracting minerals<sup>32</sup> or products of minerals<sup>33</sup>. No person may fire a shot unless he is a shotfirer or trainee shotfirer, and other than by means of a suitable exploder<sup>34</sup> or suitable safety fuse<sup>35</sup>. No person may cap a safety fuse with a detonator unless he is using equipment designed for the purpose and he is in a suitably sheltered place designated by the operator for the purpose<sup>36</sup>.

1 'Explosives' means explosive articles or explosive substances; and 'explosive article' means an article containing one or more explosive substances: Quarries Regulations 1999, SI 1999/2024, reg 2(1) (definitions substituted by SI 2002/2174). As to the meaning of 'explosive substance' see PARA 841 note 13.

- 2 Quarries Regulations 1999, SI 1999/2024, reg 24.
- 3 As to the meaning of 'operator' see PARA 838 note 11.
- 4 As to what is reasonably practicable see PARA 417.
- 5 As to the meaning of 'appoint' see PARA 840 note 7.
- 6 As to the meaning of 'competent' PARA 839 note 24.
- 7 Quarries Regulations 1999, SI 1999/2024, reg 25(1). As to the meaning of 'quarry' see PARA 838.
- 8 'Shotfiring operations' includes (1) checking to ensure that the blasting specification is still appropriate for the site conditions at the time the blasting is to take place; (2) mixing explosives; (3) priming a cartridge; (4) charging and stemming a shothole; (5) linking or connecting a round of shots; (6) withdrawal and sheltering of persons; (7) inspecting and testing a shotfiring circuit; (8) firing a shot; and (9) checking for misfires; and 'shot' means a single shot or a series of shots fired as part of one blast: Quarries Regulations 1999, SI 1999/2024, reg 2(1). As to the meaning of 'misfire' see note 11.
- 9 'Shotfirer' means a person appointed pursuant to the Quarries Regulations 1999, SI 1999/2024, reg 25(2)(a)(ii) (see head (a)(ii) in the text) to be responsible for shotfiring operations: reg 2(1).
- 10 'Trainee shotfirer' means a person appointed pursuant to the Quarries Regulations 1999, SI 1999/2024, reg 25(2)(a)(ii) (see head (a)(ii) in the text) to undergo training in shotfiring operations under the close personal supervision of a shotfirer: reg 2(1).
- 11 'Misfire' means an occurrence in relation to the firing of shots where (1) testing before firing reveals broken continuity which cannot be rectified; or (2) a shot or any part of a shot fails to explode when an attempt is made to fire it: Quarries Regulations 1999, SI 1999/2024, reg 2(1).
- 12 Quarries Regulations 1999, SI 1999/2024, reg 25(2).
- 13 Quarries Regulations 1999, SI 1999/2024, reg 25(3).
- 14 As to the meaning of 'vehicle' see PARA 840 note 10.
- 15 'Detonator' means an initiator for explosives that contains a charge of high explosive fired by means of a flame, spark, electric current or shock tube: Quarries Regulations 1999, SI 1999/2024, reg 2(1).
- 16 'Explosives store' means a building, enclosed area or metal structure where explosives are stored under a licence granted or registration made under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see **EXPLOSIVES**): Quarries Regulations 1999, SI 1999/2024, reg 2(1) (definition substituted by SI 2005/1082).
- 17 Quarries Regulations 1999, SI 1999/2024, reg 25(4).
- 18 Quarries Regulations 1999, SI 1999/2024, reg 25(5).
- 19 Quarries Regulations 1999, SI 1999/2024, reg 26(1).
- 20 Quarries Regulations 1999, SI 1999/2024, reg 26(2).
- 21 Quarries Regulations 1999, SI 1999/2024, reg 27.
- 22 Ie the individual appointed under the Quarries Regulations 1999, SI 1999/2024, reg 8(1)(c): see PARA 839.
- 23 Quarries Regulations 1999, SI 1999/2024, reg 28(a). The prescribed period is (1) where the shot was fired by means of safety fuse, until a period of 30 minutes has elapsed since the misfire; or (2) where the shot was fired by other means, until a period of 5 minutes has elapsed since the misfire and any shotfiring apparatus has been disconnected from the shot: reg 28(a)(i), (ii). As to the meaning of 'safety fuse' see note 27.
- 24 Quarries Regulations 1999, SI 1999/2024, reg 28(b).
- 25 Quarries Regulations 1999, SI 1999/2024, reg 28(c).
- 26 Quarries Regulations 1999, SI 1999/2024, reg 29(1).

27 'Safety fuse' means a flexible cord that contains an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing plain detonators or blackpowder, without initiating burning in a similar fuse that may be in lateral contact alongside: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

28 Quarries Regulations 1999, SI 1999/2024, reg 29(2).

29 Quarries Regulations 1999, SI 1999/2024, reg 29(3).

30 Quarries Regulations 1999, SI 1999/2024, reg 29(4)(a).

31 le in accordance with action taken in pursuance of the Quarries Regulations 1999, SI 1999/2024, reg 28(b): reg 29(4)(b).

32 As to the meaning of 'minerals' see PARA 838 note 4.

33 Quarries Regulations 1999, SI 1999/2024, reg 29(4)(b), (c).

34 'Exploder' means a device designed for firing detonators: Quarries Regulations 1999, SI 1999/2024, reg 2(1).

35 Quarries Regulations 1999, SI 1999/2024, reg 29(5).

36 Quarries Regulations 1999, SI 1999/2024, reg 29(6).

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### **843. Duties of employers and participation and duties of persons at work.**

Every employer<sup>1</sup> of persons at work at a quarry<sup>2</sup> and every person at work at the quarry must co-operate with the operator<sup>3</sup> to the extent requisite to enable the operator to comply with the relevant statutory provisions<sup>4</sup>.

It is the duty of the operator to make and maintain arrangements which will enable him and those persons who regularly work at the quarry to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of persons who regularly work at the quarry and in checking the effectiveness of such measures<sup>5</sup>. For these purposes, a committee of persons with suitable practical experience of quarrying operations may be appointed for the quarry:

- 1764 (1) in a case where there is an association or body representative of a majority of the total number of persons working at the quarry, by that association or body;  
or
- 1765 (2) jointly by associations or bodies which are together representative of such a majority<sup>6</sup>.

The operator of a quarry must permit sufficient inspections to be carried out by members of the committee so appointed to enable every part of the quarry and any plant and equipment at the quarry to be inspected once a month by two of those committee members together<sup>7</sup>.

The operator of a quarry must permit members of a committee so appointed who are carrying out such an inspection to:

- 1766 (a) scrutinise any documents which are kept at the quarry in compliance with the relevant statutory provisions;
- 1767 (b) review the risk assessment<sup>8</sup> and the measures to protect health and safety<sup>9</sup> and to suggest improvements thereto; and
- 1768 (c) be accompanied by their advisers<sup>10</sup>;

and must ensure that any improvements suggested under head (b) above are considered and, if they are not accepted, written reasons for this are given to the members of the committee who made the inspection<sup>11</sup>. The operator of a quarry and any person nominated by him is entitled to accompany the two committee members who are carrying out such an inspection during that inspection<sup>12</sup>. Where any two committee members so appointed have carried out such an inspection, they may make a written report of the matters ascertained as a result of the inspection and, if such a report is made, the two committee members and the operator or any person nominated by him must sign the report<sup>13</sup>. Where a written report is made, a copy of the report signed in accordance with that requirement is to be posted in a conspicuous position at the quarry and kept posted there for 28 days<sup>14</sup>.

Where an notifiable injury or dangerous occurrence<sup>15</sup> occurs at a quarry, the operator must permit two members of the committee so appointed to inspect together the place where the injury or dangerous occurrence occurred and, so far as is necessary for ascertaining its cause,

any other part of the quarry and any plant, and to take samples of the atmosphere, dust or water at that place<sup>16</sup>.

No employer may employ any person to work at a quarry unless there is an operator<sup>17</sup>. Where the employees of more than one employer are at work at a quarry, it is the duty of each employer to comply with those relevant statutory provisions which apply to the quarry<sup>18</sup>.

Every person at work at a quarry must:

- 1769 (i) to the extent of his responsibility and authority, carry out the duties allocated to him with reasonable care for the health and safety of himself and other persons who may be affected by his acts or omissions; and
- 1770 (ii) comply with the rules put in place<sup>19</sup> at the quarry by the operator<sup>20</sup>.

An employer of a person at work at a quarry must ensure that, where health surveillance<sup>21</sup> is required in respect of any work to which that person is to be assigned, the health surveillance commences before that person begins to carry out such work<sup>22</sup>.

1 As to self-employed persons see PARA 838.

2 As to the meaning of 'quarry' see PARA 838.

3 As to the meaning of 'operator' see PARA 838 note 11.

4 Quarries Regulations 1999, SI 1999/2024, reg 39. As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

5 Quarries Regulations 1999, SI 1999/2024, reg 40(1).

6 Quarries Regulations 1999, SI 1999/2024, reg 40(2). As to employee participation and consultation generally see PARA 449 et seq.

7 Quarries Regulations 1999, SI 1999/2024, reg 40(4). An inspection carried out under reg 40 counts as an inspection under the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 5 (see PARA 450): reg 5(4) (amended by SI 1999/2024).

8 Ie the risk assessment referred to in the Quarries Regulations 1999, SI 1999/2024, reg 7(1)(a): see PARA 839 head (1).

9 Ie the measures referred to in the Quarries Regulations 1999, SI 1999/2024, reg 7(1)(b): see PARA 839 head (2).

10 Quarries Regulations 1999, SI 1999/2024, reg 40(5).

11 Quarries Regulations 1999, SI 1999/2024, reg 40(6).

12 Quarries Regulations 1999, SI 1999/2024, reg 40(7).

13 Quarries Regulations 1999, SI 1999/2024, reg 40(8).

14 Quarries Regulations 1999, SI 1999/2024, reg 40(9).

15 Ie an injury or dangerous occurrence which is notifiable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163: see PARA 399 et seq.

16 Quarries Regulations 1999, SI 1999/2024, reg 40(3).

17 Quarries Regulations 1999, SI 1999/2024, reg 41(1).

18 Quarries Regulations 1999, SI 1999/2024, reg 41(2). This is without prejudice to reg 6 (see PARA 839): reg 41(2).

19 Ie in accordance with the Quarries Regulations 1999, SI 1999/2024, reg 10: see PARA 839.

20 Quarries Regulations 1999, SI 1999/2024, reg 42.

21 The health surveillance required under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 6: see PARA 435.

22 Quarries Regulations 1999, SI 1999/2024, reg 43 (amended by SI 1999/3242).

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## (9) RAILWAYS

### 844. Health and safety on the railways; in general.

The provisions of Part I of the Health and Safety at Work Act 1974<sup>1</sup> have been extended in relation to any railway, tramway or trolley vehicle system, or any transport system using any other mode of guided transport<sup>2</sup>. In general, the Office of Rail Regulation, and not the Health and Safety Executive has enforcement responsibilities with regard to safety on the railways<sup>3</sup>.

Various health and safety regulations have been made with respect to railways, including the Railway Safety (Miscellaneous Provisions) Regulations 1997<sup>4</sup>, the Railway Safety Regulations 1999<sup>5</sup>, the Railway Safety (Miscellaneous Amendments) Regulations 2001<sup>6</sup> and the Railways and Other Guided Transport Systems (Safety) Regulations 2006<sup>7</sup>. Regulations may also be made under the Transport and Works Act 1992 for securing the safe operation of railways, tramways, trolley vehicle systems and prescribed systems of guided transport<sup>8</sup>. These, and other statutory provisions relating to health and safety on the railways, are dealt with elsewhere in this work<sup>9</sup>.

The Secretary of State has power to make regulations requiring persons who provide railway services to pay railway safety levy<sup>10</sup>.

The application to railway premises of those provisions of the Offices, Shops and Railway Premises Act 1963 which are still extant has already been discussed<sup>11</sup>.

1    Ie the Health and Safety at Work etc Act 1974 Pt I (ss 1-54).

2    See the Railways Act 1993 s 117; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 225.

3    See the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557; the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 3(6); and PARAS 370, 372. As to the Office of Rail Regulation see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 49 et seq.

4    Ie the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553.

5    Ie the Railway Safety Regulations 1999, SI 1999/2244.

6    Ie the Railway Safety (Miscellaneous Amendments) Regulations 2001, SI 2001/3291.

7    Ie the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599.

8    See the Transport and Works Act 1992 s 41; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 204.

9    See **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 195.

10   Health and Safety at Work etc Act 1974 s 43A(1) (s 43A added by the Railways and Transport Safety Act 2003 s 105(1)). Railway safety levy must be applied only for the purpose of meeting expenses incurred (1) in respect of activities undertaken by the Office of Rail Regulation under or by virtue of the Health and Safety at Work etc Act 1974 or the Railways Act 2005 Sch 3; or (2) in respect of activities in relation to a transport system falling within Sch 3 para 1(3) that are undertaken by that Office under or by virtue of any other enactment: Health and Safety at Work etc Act 1974 s 43A(2) (as so added; amended by the Railways Act 2005 s 2, Sch 3 para 12(1), (2)). The railway safety levy may not be used to meet an expense in respect of which a fee is payable under regulations made under the Health and Safety at Work etc Act 1974 s 43 (see PARA 354) or an



expense in respect of a matter specified by the regulations for this purpose: s 43A(3) (as so added). Where an expense is incurred partly in respect of activity within s 43A(2)(a) or (b) (see heads (1)-(2) above) and partly in respect of other activity, the railway safety levy may be used to meet a part of that expense which is reasonably referable to activity within s 43A(2)(a) or (b): s 43A(4) (as so added). Regulations under s 43A(1) may, in particular, determine or enable the Office of Rail Regulation to determine (a) the total amount of the railway safety levy to be imposed in respect of a specified period; (b) the persons by whom the levy is to be paid; (c) the criteria for assessing the proportion of the levy to be paid by a particular person (which may, in particular, refer to the size of a person's income or provide for an amount to be reduced or waived in specified circumstances); (d) the periods in respect of which the levy is to be paid; (e) the manner in which the levy is to be paid; (f) the person to whom the levy is to be paid; (g) when the levy is to be paid: s 43A(5) (as so added; amended by the Railways Act 2005 Sch 3 para 12(3)). Such regulations may also, in particular, enable the Office of Rail Regulation (i) to require a person who provides railway services to supply information for the purposes of the consideration of a matter specified in the Health and Safety at Work etc Act 1974 s 43A(5); (ii) where information requested is not supplied, to make assumptions; (iii) to revise a determination of a matter specified in s 43A(5) (whether before, during or after the period to which it relates); (iv) to make refunds: s 43A(6) (as so added; amended by the Railways Act 2005 Sch 3 para 12(3)). Regulations by virtue of the Health and Safety at Work etc Act 1974 s 43A(6)(a) (see head (i) above) may, in particular, make provision (A) about the manner and timing of the supply of information; (B) about certification of the accuracy of information supplied; (C) creating a criminal offence in connection with the supply of inaccurate or misleading information (but not an offence punishable with imprisonment): s 43A(7) (as so added). Regulations under s 43A(1) may enable payment to be enforced by civil proceeding: s 43A(8) (as so added). For these purposes a person provides railway services if he manages or controls, or participates in managing or controlling, a transport system falling within the Railways Act 2005 Sch 3 para 1(3): Health and Safety at Work etc Act 1974 s 43A(9) (as so added; amended by the Railways Act 2005 Sch 3 para 12(4)). At the date at which this title states the law, the Railway Safety Levy Regulations 2006, SI 2006/1010, had been made under the Health and Safety at Work etc Act 1974 s 43A(1), (5)-(8). See **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 202.

11 See PARA 327 et seq. As to the meaning of 'railway premises' for these purposes see PARA 330.

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## **(10) FACTORIES**

### **845. Meaning of 'employment'.**

For the purposes of the statutory provisions relating to safety, health and welfare in factories<sup>1</sup> or of any proceedings under those provisions, a woman, young person or child<sup>2</sup> who works in a factory<sup>3</sup>, whether for wages or not, either in a process<sup>4</sup> or in cleaning any part of the factory used for any process, or in cleaning or oiling any part of the machinery<sup>5</sup> or plant, or any other kind of work whatsoever incidental to or connected with the process, or connected with the article made or otherwise the subject of the process in the factory, is, save as otherwise provided, deemed to be employed in the factory<sup>6</sup>.

A young person who works in a factory, whether for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands is deemed to be employed in the factory for the purposes of the previously mentioned statutory provisions or any proceedings under them, but the provisions relating to the employment of young persons do not apply to any such young person who is employed mainly outside the factory<sup>7</sup>. An apprentice is deemed to be a person employed<sup>8</sup>.

Employment is deemed to be continuous unless interrupted by an interval of at least half an hour<sup>9</sup>.

1     le the provisions of the Factories Act 1961, and of those regulations made under either that Act or the Health and Safety at Work etc Act 1974.

2     As to the meaning of 'young person' see PARA 316 note 1. A child may not be employed in any industrial undertaking, and the employment of young persons in such undertakings is subject to particular provisions: see the Employment of Women, Young Persons, and Children Act 1920 s 1; and PARA 337. These provisions may be modified or repealed by health and safety regulations: see PARAS 424-425.

3     As to the meaning of 'factory' see PARA 318 et seq.

4     As to the meaning of 'process' see PARA 318 note 6.

5     As to the meaning of 'machinery' see PARA 313 note 3.

6     Factories Act 1961 s 176(4) (amended by the Employment Act 1989 s 29(4), Sch 7 Pt II).

7     Factories Act 1961 s 176(5) (amended by the Employment Act 1989 s 29(3), Sch 6 para 6).

8     Factories Act 1961 s 176(7).

9     Factories Act 1961 s 176(6).

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**846. Persons who must not be employed.**

The occupier of a factory<sup>1</sup> must not knowingly allow a woman to be employed there within four weeks after childbirth<sup>2</sup>.

No child may be employed in any factory or in any industrial undertaking other than one in which only members of the same family are employed<sup>3</sup>.

<sup>1</sup> As to the meaning of 'factory' see PARA 318 et seq. As to who is the occupier of a factory see PARA 862 text and notes 5-6.

<sup>2</sup> Public Health Act 1936 s 205. 'Woman' is not defined in this Act. It is an offence to contravene this provision, punishable on summary conviction (see s 296) with a fine not exceeding level 1 on the standard scale: see s 205 (amended by the Statute Law (Repeals) Acts 1993 and 2004; and by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 853 note 29.

<sup>3</sup> See the Employment of Women, Young Persons, and Children Act 1920 ss 1(1), 3(2), Schedule Pt I; and PARA 337.

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#### **847. Inspector's power to require certificate.**

Where an authorised inspector<sup>1</sup> is of opinion that the employment of a young person<sup>2</sup> in a factory<sup>3</sup> or in any particular process<sup>4</sup> or kind of work in a factory is prejudicial to his health or the health of other persons, he may serve<sup>5</sup> written notice on the occupier<sup>6</sup> of the factory requiring that the employment of that young person in the factory or in the process or kind of work be discontinued after the period named in the notice<sup>7</sup>. After this period the occupier must not continue to employ the young person unless the appointed factory doctor or an employment medical adviser<sup>8</sup> has personally examined the young person after the service of the notice, and certified that he is fit for employment in the factory or in the process or kind of work which was the subject of the notice<sup>9</sup>. These provisions may be modified or repealed by health and safety regulations<sup>10</sup>.

1 As to authorised inspectors see PARA 375 note 2.

2 As to the meaning of 'young person' see PARA 316 note 1.

3 As to the meaning of 'factory' see PARA 318 et seq.

4 As to the meaning of 'process' see PARA 318 note 6.

5 As to the service of notices see PARAS 388-389.

6 As to who is the occupier of a factory see PARA 862 text and notes 5-6.

7 Factories Act 1961 s 119.

8 As to employment medical advisers see PARA 384 et seq.

9 Factories Act 1961 s 119 (amended by the Employment Medical Advisory Service Act 1972 s 2(1), 9, Schs 2, 3).

10 See PARAS 424-425.

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#### **848. Medical examination of person or persons employed in a factory.**

If an employment medical adviser<sup>1</sup> is of opinion that there ought, on the specified grounds<sup>2</sup>, to be a medical examination<sup>3</sup> of a person or persons employed<sup>4</sup> in a factory<sup>5</sup>, he may serve on the occupier<sup>6</sup> of the factory a written notice stating that he is of that opinion and requiring that the occupier is to permit a medical examination in accordance with these provisions of the person or persons in question, and the examination must be permitted accordingly<sup>7</sup>. The specified grounds on which a medical examination of a person may be so required by an employment medical adviser's notice are that (in the adviser's opinion) the person's health has been or is being injured, or it is possible that it has been, is being or will be injured, by reason of the nature of the work he is or has been called upon to do or may (to the adviser's knowledge) be called upon to do; and a notice under these provisions may be given with respect to one or more named persons or to persons of a class or description specified in the notice<sup>8</sup>.

Such a notice must name the place where the medical examination is to be conducted and, if it is a place other than the factory, the day on which and the time at which it is to be begun<sup>9</sup>. Every person to whom the notice relates must be informed, as soon as practicable after service of it, of the contents of the notice and of the fact that he is free to attend for the purpose of submitting to the examination<sup>10</sup>. If the notice states that the examination is to be conducted at the factory, suitable accommodation at the factory must be provided for the conduct of the examination<sup>11</sup>.

A medical examination conducted in pursuance of such a notice must be begun within seven days after the day on which the notice is served, and must be conducted by, or in accordance with arrangements made by, an employment medical adviser, and take place at a reasonable time during working hours<sup>12</sup>.

An employment medical adviser may, by written notice served on the occupier of a factory, cancel a notice served on the occupier under the above provisions; and a notice which relates to two or more named persons may be cancelled either in relation to them all or in relation to any one or more of them<sup>13</sup>.

1 As to employment medical advisers see PARA 384 et seq.

2 Ie on the grounds set out in the Factories Act 1961 s 10A(2): see the text and note 8.

3 For these purposes, 'medical examination' includes pathological, physiological and radiological tests and similar investigations: Factories Act 1961 s 10A(6) (s 10A added by the Employment Medical Advisory Service Act 1972 s 3).

4 As to the meaning of 'employed' see PARA 845.

5 As to the meaning of 'factory' see PARA 318 et seq.

6 As to who is the occupier of a factory see PARA 862 text and notes 5-6.

7 Factories Act 1961 s 10A(1) (as added: see note 3). As to the service of notices see PARAS 388-389.

8 Factories Act 1961 s 10A(2) (as added: see note 3).

9 Factories Act 1961 s 10A(3) (as added: see note 3).

- 10     Factories Act 1961 s 10A(3)(a) (as added: see note 3).
- 11     Factories Act 1961 s 10A(3)(b) (as added: see note 3).
- 12     Factories Act 1961 s 10A(4) (as added: see note 3).
- 13     Factories Act 1961 s 10A(5) (as added: see note 3).

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#### **849. Other health and safety provisions relating to factories.**

Many of the provisions of the Factories Act 1961 relating to health and safety have now been repealed and the regulations made under them revoked and replaced by regulations of more general application<sup>1</sup>. The provisions of that Act which are still extant, other than the provisions set out in the preceding paragraphs<sup>2</sup>, the general application of that Act and offences and proceedings under it are discussed elsewhere in this title<sup>3</sup>.

1 As to provisions relating to general risks see PARA 583 et seq.

2 Ie the provisions set out in PARAS 845-848.

3 See PARAS 306 et seq, 355-356, 373, 390-391, 481, 513, 861 et seq.

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## **(11) REGULATIONS FOR PARTICULAR MANUFACTURERS AND PROCESSES**

### **850. Trades and processes subject to regulations.**

Many regulations specific to certain trades which were made under statutory powers<sup>1</sup> have been replaced under the Health and Safety at Work etc Act 1974 by regulations specific to certain substances, activities or processes which are general to all trades<sup>2</sup>. Those manufacturing and processing trades to which specific regulations for safety and health still apply include non-ferrous metal foundry work<sup>3</sup> and the manufacture and decoration of pottery<sup>4</sup>.

Under the Legislative and Regulatory Reform Act 2006, a minister of the Crown<sup>5</sup> has a general power to make provision by order for the purpose of removing or reducing any burden<sup>6</sup>, or the overall burdens, resulting directly or indirectly for any person from any legislation<sup>7</sup>. The provision that may so be made includes provision abolishing, conferring or transferring, or providing for the delegation of, functions of any description, provision creating or abolishing a body or office, and provision made by amending or repealing any enactment<sup>8</sup>.

A minister of the Crown may also by order make any provision which he considers would serve the purpose of securing that regulatory functions<sup>9</sup> are exercised so as to comply with the following principles<sup>10</sup>. Those principles are that:

- 1771 (1) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- 1772 (2) regulatory activities should be targeted only at cases in which action is needed<sup>11</sup>.

The provision that may be made for this purpose includes:

- 1773 (a) provision modifying the way in which a regulatory function is exercised by any person;
- 1774 (b) provision amending the constitution of a body exercising regulatory functions which is established by or under an enactment;
- 1775 (c) provision transferring, or providing for the delegation of, the regulatory functions conferred on any person<sup>12</sup>,

and provision made by amending or repealing any enactment<sup>13</sup>.

A minister may not make provision under either of the powers described above, other than provision which merely restates<sup>14</sup> an enactment, unless he considers that the following conditions, where relevant, are satisfied in relation to that provision<sup>15</sup>. Those conditions are that:

- 1776 (i) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means;
- 1777 (ii) the effect of the provision is proportionate to the policy objective;



- 1778 (iii) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- 1779 (iv) the provision does not remove any necessary protection;
- 1780 (v) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- 1781 (vi) the provision is not of constitutional significance<sup>16</sup>.

A minister may not make provision under either power which merely restates an enactment unless he considers that the following condition is satisfied in relation to that provision, namely that the provision made would make the law more accessible or more easily understood<sup>17</sup>.

Except with the agreement of the National Assembly for Wales, an order under these powers may not make provision which would be within the legislative competence of the Assembly if the provision were contained in an Assembly Measure (until the Assembly Act provisions of the Government of Wales Act 2006<sup>18</sup> come into force) or an Act of the Assembly (after those provisions come into force)<sup>19</sup>. An order under the enactments above may not make any provision:

- 1782 (A) conferring a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;
- 1783 (B) modifying or removing a function of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;
- 1784 (C) restating any provision which confers a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; or
- 1785 (D) that could be made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government in the exercise of any of their functions,

except with the agreement of the Welsh Ministers<sup>20</sup>.

1 Regulations and orders made under the Factory and Workshop Act 1901 (repealed), and the Police, Factories, etc (Miscellaneous Provisions) Act 1916 (repealed), were continued in force by the Factories Act 1937 s 159 (repealed), and these, together with those made under that Act and under the Lead Paint (Protection against Poisoning) Act 1926, the Factories Act 1948 and the Factories Act 1959 (all repealed), were continued in force as if made under the Factories Act 1961 by s 183(1), Sch 6. Those regulations and orders, together with those made under the Factories Act 1961, may be continued in force, notwithstanding the repeal of the power to make such regulations.

2 See PARA 424 et seq.

3 See the Non-ferrous Metals (Melting and Founding) Regulations 1962, SI 1962/1667, which (so far as remaining in force) require all dressing operations to be carried out inside a weather-proof building: see reg 18.

4 See the Pottery (Health and Welfare) Special Regulations 1950, SI 1950/65, reg 16 (amended by SI 1982/877), which provides that the dry-bulb temperature in any workroom is not, while work is going on, to be above 24 degrees Celsius: provided that when the temperature in the shade in the open air exceeds 18 degrees Celsius the temperature in the workroom may exceed 24 degrees Celsius but may not exceed by more than 6 degrees the temperature in the shade in the open air: Pottery (Health and Welfare) Special Regulations 1950, SI 1950/65, reg 16(1) (as so amended). The dry-bulb temperature in any workroom in which pottery is made by the compression of clay dust or is fettled after being so made must not after the first hour be less than 13 degrees Celsius while work is going on: reg 16(2) (as so amended). A suitable thermometer must be provided and maintained in a suitable position in every workroom: reg 16(3). When any person is in an oven for the purpose of drawing, the temperature at his head-height must not exceed 46 degrees Celsius: reg 16(4) (as so amended). Upon demand being made at any time by persons employed or immediately proposed to be employed in an oven for the purpose of drawing, the temperature in the oven must be taken by the occupier or his representative and the occupier must provide a suitable thermometer for the purpose: reg 16(5). Subject to the provisions of regs 4 and 5, these provisions apply to all factories in which the manufacture or decoration of

pottery is carried on or in which, for use in the manufacture or decoration of pottery, lithographic transfers, frits or glazes are made, or flint or quartz is ground or powdered, or ground or powdered flint or quartz is mixed with clay or other material to form the body of the ware: reg 3. Nothing in them, however, applies to a factory in which any of the following articles but no other pottery is made: (1) unglazed or salt-glazed ware made from natural clay in the plastic state, to which no flint or quartz or other form of free silica is or has been added; (2) bricks glazed or unglazed; (3) architectural terra-cotta made from plastic clay and either unglazed or glazed with a leadless glaze only; and nothing in them applies to the manufacture of potters' colours in a factory in which no pottery is manufactured or decorated: reg 4. As to certificates of exemption see reg 5 (amended by SI 1995/2923). 'Glaze' does not include an engobe or slip; 'leadless glaze' means a glaze which does not contain more than one per cent of its dry weight of a lead compound calculated as lead monoxide; and 'pottery' includes china, earthenware and any article made from clay or from a mixture containing clay and other materials: Pottery (Health and Welfare) Special Regulations 1950, SI 1950/65, reg 2. The remaining provisions of the 1950 regulations have been revoked.

5 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 354): Legislative and Regulatory Reform Act 2006 s 32(1).

6 For these purposes, 'burden' means any of the following: (1) a financial cost; (2) an administrative inconvenience; (3) an obstacle to efficiency, productivity or profitability; or (4) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity: Legislative and Regulatory Reform Act 2006 s 1(3). Provision may not be made under s 1(1) in relation to any burden which affects only a Minister of the Crown or government department, unless it affects the minister or department in the exercise of a regulatory function: s 1(4). As to the meaning of 'regulatory function' see note 9.

For the purposes of s 1(2), a financial cost or administrative inconvenience may result from the form of any legislation (eg where the legislation is hard to understand): s 1(5).

7 Legislative and Regulatory Reform Act 2006 s 1(1), (2). For these purposes, 'legislation' means any of the following or a provision of any of the following: (1) a public general Act or local Act (whether passed before or after the commencement of the Legislative and Regulatory Reform Act 2006 s 1 (ie 8 January 2007: see s 33)); (2) a Measure or Act of the National Assembly for Wales; or (3) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act referred to in head (1) above or a Measure or Act of the Assembly, but does not include any instrument which is, or is made under, Northern Ireland legislation: Legislative and Regulatory Reform Act 2006 ss 1(6), 32(1) (s 1(6) amended by SI 2007/1388).

8 Legislative and Regulatory Reform Act 2006 s 1(7). An order under s 1 may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the minister making it considers appropriate: s 1(8). An order under s 1 may bind the Crown: s 1(9). Such an order must be made in accordance with Pt 1 (ss 1-20): s 1(10).

9 'Regulatory function' means (1) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or (2) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity: Legislative and Regulatory Reform Act 2006 s 32(2). For these purposes, the references to a function (a) include a function exercisable by or on behalf of the Crown; (b) do not include any function exercisable by any body of, or any person holding office in, the Church of England or any function of conducting criminal or civil proceedings (s 32(3)), and the references to an activity include providing goods and services and employing or offering employment to any person (s 32(4)).

10 Legislative and Regulatory Reform Act 2006 s 2(1), (2).

11 Legislative and Regulatory Reform Act 2006 s 2(3).

12 The provision referred to in head (c) in the text includes provision (1) to create a new body to which, or a new office to the holder of which, regulatory functions are transferred; (2) to abolish a body from which, or office from the holder of which, regulatory functions are transferred: Legislative and Regulatory Reform Act 2006 s 2(5).

13 Legislative and Regulatory Reform Act 2006 s 2(4). The provision that may be made under s 2(1) does not include provision conferring any new regulatory function or abolishing any regulatory function: s 2(6). An order under s 2 may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the minister making it considers appropriate: s 2(7). An order under s 2 may bind the Crown: s 2(8). Such an order must be made in accordance with Pt 1: s 2(9). For an order made under s 2 see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960.

14 For these purposes, to 'restate' an enactment means to replace it with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement): Legislative and Regulatory Reform Act 2006 s 3(5).

15 Legislative and Regulatory Reform Act 2006 s 3(1).

16 Legislative and Regulatory Reform Act 2006 s 3(2).

17 Legislative and Regulatory Reform Act 2006 s 3(3), (4).

18 In the Government of Wales Act 2006 ss 107, 108, 110-115: s 103(8). Those provisions are to be brought into force in accordance with s 105 only if the majority of the voters in a referendum held by virtue of s 103(1) vote in favour of the Assembly Act provisions coming into force: s 103(2). At the date at which this title states the law, those provisions were not in force.

19 Legislative and Regulatory Reform Act 2006 s 11(1) (s 11 substituted by SI 2007/1388).

20 Legislative and Regulatory Reform Act 2006 s 11(2) (as substituted: see note 19). Section 11(1) and s 11(2)(d) (head (d) in the text) do not apply to any provision of an order under Pt 1 falling within s 1(8) (see note 8) or s 2(7) (see note 13): s 11(3) (as so substituted).

For further restrictions and as to the procedure for making an order see ss 4-10, 12-20 (ss 4, 13 amended by SI 2007/1388).

For examples of orders made under the Regulatory Reform Act 2001 (repealed) which affect health and safety at work see the Regulatory Reform (Sunday Trading) Order 2004, SI 2004/470; and the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

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## **8. CRIMINAL OFFENCES**

### **(1) UNDER THE GENERAL LAW**

#### **851. Manslaughter.**

Where an employee or member of the public is fatally injured the person or persons responsible may, if the accident occurred because of the grossly negligent way in which they carried out their health and safety responsibilities, be guilty of involuntary manslaughter<sup>1</sup>. A defendant is properly convicted of involuntary manslaughter by breach of duty if the jury are directed, and find, that the defendant was in breach of a duty of care towards the victim who died, that the breach of duty caused the death of the victim, and that the breach of duty was such as to be characterised as gross negligence and therefore a crime. Whether the defendant's breach of duty amounted to gross negligence depends on the seriousness of the breach of duty committed by the defendant in all the circumstances in which he was placed when it occurred and whether, having regard to the risk of death involved, the conduct of the defendant was so bad as to amount in the jury's judgment to a criminal act or omission<sup>2</sup>. There is, however, particular difficulty in attributing responsibility for the breach of duty in the case of a corporate employer<sup>3</sup>. In 1999 the Court of Appeal reaffirmed the principle that although evidence of the defendant's state of mind is not a prerequisite to a conviction, a corporate defendant cannot be convicted of the crime of manslaughter by gross negligence in the absence of evidence establishing the guilt of an identified human individual which can be attributed to that corporate defendant<sup>4</sup>.

Following the Law Commission's recommendation that a new statutory offence of corporate killing should be created<sup>5</sup>, the common law offence of manslaughter by gross negligence in its application to corporations and specified other bodies<sup>6</sup> has been abolished and a new offence of corporate manslaughter has been created<sup>7</sup>. An organisation to which the new provisions apply is guilty of an offence if the way in which its activities are managed or organised (1) causes a person's death; and (2) amounts to a gross breach of a relevant duty of care<sup>8</sup> owed by the organisation to the deceased<sup>9</sup>; but an organisation is guilty of such an offence only if the way in which its activities are managed or organised by its senior management<sup>10</sup> is a substantial element in the breach referred to above<sup>11</sup>. Proceedings for an offence of corporate manslaughter may not be instituted in England and Wales without the consent of the Director of Public Prosecutions<sup>12</sup>. An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter<sup>13</sup>, or of an offence of encouraging or assisting crime<sup>14</sup> by reference to an offence of corporate manslaughter<sup>15</sup>.

Where in the same proceedings there is (a) a charge of corporate manslaughter arising out of a particular set of circumstances; and (b) a charge against the same defendant of a health and safety offence<sup>16</sup> arising out of some or all of those circumstances, the jury may, if the interests of justice so require, be invited to return a verdict on each charge<sup>17</sup>. An organisation that has been convicted of corporate manslaughter arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances<sup>18</sup>.

The common law as to manslaughter will, however, still apply to individual directors and employees<sup>19</sup>.

1 As to manslaughter generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92 et seq. For a recent example of a conviction in a health and safety case which was, however, overturned on appeal see *R v Dean* [2002] EWCA Crim 2410, [2002] All ER (D) 499 (Oct).

2 *R v Adomako* [1995] 1 AC 171, [1994] 3 All ER 79, HL (a professional negligence case involving an anaesthetist); applied in *R (on the application of Rowley) v DPP* [2003] EWHC 693 (Admin), [2003] All ER (D) 72 (Apr).

3 See eg *R v P & O European Ferries (Dover) Ltd* (1990) 93 Cr App Rep 72.

4 See *A-G's Reference (No 2 of 1999)* [2000] QB 796, [2000] 3 All ER 182, CA, following *R v HM Coroner for East Kent, ex p Spooner, R v HM Coroner for East Kent, ex p De Rohan* (1987) 88 Cr App Rep 10, DC, and approving as a 'classic analysis' the dictum of Turner J in *R v P & O European Ferries (Dover) Ltd* (1990) 93 Cr App Rep 72 at 84 ('where a corporation, through the controlling mind of one of its agents, does an act which fulfils the prerequisites of the crime of manslaughter, it is properly indictable for the crime of manslaughter').

5 See *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com no 237 (1996)).

6 (1) a corporation; (2) a department or other body listed in the Corporate Manslaughter and Corporate Homicide Act 2007 Sch 1 (amended by the Serious Crime Act 2007 s 74(2)(g), Sch 8 Pt 7 para 178; and by SI 2008/396 and SI 2009/229); (3) a police force; (4) a partnership, or a trade union or employers' association, that is an employer: Corporate Manslaughter and Corporate Homicide Act 2007 s 1(2). 'Corporation' does not include a corporation sole but includes any body corporate wherever incorporated: s 25. 'Employers' association' has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992 s 122 (see **EMPLOYMENT** vol 40 (2009) PARA 1028); 'partnership' means a partnership within the Partnership Act 1890 or a limited partnership registered under the Limited Partnerships Act 1907 (see **PARTNERSHIP** vol 79 (2008) PARAS 1, 218), or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom; and 'trade union' has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992 s 1 (see **EMPLOYMENT** vol 40 (2009) PARA 846): Corporate Manslaughter and Corporate Homicide Act 2007 s 25.

7 See the Corporate Manslaughter and Corporate Homicide Act 2007 ss 1(5)(a), 20; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**. Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under the 2007 Act against (1) a department or other body listed in Sch 1; (2) a police force; (3) a partnership; (4) a trade union; or (5) an employers' association that is not a corporation, as it applies in relation to proceedings against a corporation: s 15(1). For these purposes, 'prescribed' means prescribed by an order made by the Secretary of State; 'provision about criminal proceedings' includes (a) provision about procedure in or in connection with criminal proceedings; (b) provision about evidence in such proceedings; (c) provision about sentencing, or otherwise dealing with, persons convicted of offences; and 'statutory' means contained in, or in an instrument made under, any Act or any Northern Ireland legislation: s 15(2). A reference in s 15 to proceedings is to proceedings in England and Wales or Northern Ireland: s 15(3). An order under s 15 is subject to negative resolution procedure (see **STATUTES** vol 44(1) (Reissue) PARAS 1516-1517): s 15(4).

8 'Relevant duty of care' is defined in the Corporate Manslaughter and Corporate Homicide Act 2007 s 2, read with ss 3-7 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**); and a breach of a duty of care by an organisation is a 'gross' breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances: s 1(4)(a), (b).

9 Corporate Manslaughter and Corporate Homicide Act 2007 s 1(1).

10 'Senior management', in relation to an organisation, means the persons who play significant roles in (1) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or (2) the actual managing or organising of the whole or a substantial part of those activities: Corporate Manslaughter and Corporate Homicide Act 2007 s 1(4)(c).

11 Corporate Manslaughter and Corporate Homicide Act 2007 s 1(3). An organisation that is guilty of corporate manslaughter is liable on conviction on indictment to a fine: s 1(6). See **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

12 See the Corporate Manslaughter and Corporate Homicide Act 2007 s 17.

13 Corporate Manslaughter and Corporate Homicide Act 2007 s 18(1).

14 (1) under the Serious Crime Act 2007 Pt 2 (ss 44-67): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

15 Corporate Manslaughter and Corporate Homicide Act 2007 s 18(1A) (added by the Serious Crime Act 2007 s 62).

- 16 'Health and safety offence' means an offence under any health and safety legislation: Corporate Manslaughter and Corporate Homicide Act 2007 s 19(3).
- 17 Corporate Manslaughter and Corporate Homicide Act 2007 s 19(1).
- 18 Corporate Manslaughter and Corporate Homicide Act 2007 s 19(2).
- 19 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92 et seq.

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## **(2) OFFENCES UNDER GENERAL HEALTH AND SAFETY LEGISLATION**

### **852. Offences under the Health and Safety at Work etc Act 1974.**

The Health and Safety at Work etc Act 1974 provides that it is an offence for a person to contravene<sup>1</sup> specified provisions of the Act<sup>2</sup>. In particular, it is an offence for a person to:

- 1786 (1) fail to discharge a general duty imposed on employers etc<sup>3</sup> or on employees<sup>4</sup>;
- 1787 (2) contravene the general duty not to interfere with certain things<sup>5</sup>;
- 1788 (3) contravene the duty not to charge employees for things done or provided pursuant to the relevant statutory provisions<sup>6</sup>;
- 1789 (4) contravene any health and safety regulations<sup>7</sup> or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of, or any condition or restriction attached to, any licence, approval, exemption or other authority issued, given or granted under the regulations)<sup>8</sup>;
- 1790 (5) contravene provisions relating the Health and Safety Executive's power to direct investigations and inquiries<sup>9</sup>;
- 1791 (6) contravene provisions relating to requirements imposed by inspectors<sup>10</sup>;
- 1792 (7) prevent persons from appearing before an inspector or answering his questions<sup>11</sup>;
- 1793 (8) contravene improvement or prohibition notices<sup>12</sup>;
- 1794 (9) obstruct inspectors or customs officers<sup>13</sup>;
- 1795 (10) contravene a requirement imposed by a notice by the Health and Safety Executive requiring information<sup>14</sup>;
- 1796 (11) make unauthorised disclosures of certain information<sup>15</sup>;
- 1797 (12) make a statement which he knows to be false or recklessly make a statement which is false where the statement is made either in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions<sup>16</sup> or for the purpose of obtaining the issue of a document under any of those provisions to himself or another person<sup>17</sup>;
- 1798 (13) intentionally make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive<sup>18</sup>, make use of any such entry which he knows to be false<sup>19</sup>;
- 1799 (14) use, with intent to deceive, a document issued or authorised to be issued under any of the relevant statutory provisions, or required for any purpose under them, or make or have in his possession a document so closely resembling any such document as to be calculated to deceive<sup>20</sup>;
- 1800 (15) pretend, falsely, to be an inspector<sup>21</sup>; and
- 1801 (16) fail to comply with certain court orders<sup>22</sup>.

Proceedings for offences under the relevant statutory provisions are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>23</sup>, though specific provisions remain as to offences under the earlier legislation<sup>24</sup>. The decision as

to whether or not to institute proceedings in a particular case is a policy decision<sup>25</sup> but is subject to the Code for Crown Prosecutors issued by the Director of Public Prosecutions<sup>26</sup>.

1 As to the meaning of 'contravention' see PARA 369 note 6.

2 See the Health and Safety at Work etc Act 1974 s 33(1); and heads (1)-(16) in the text. Section 33 is one of the enactments specified for the purposes of orders under the Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71) (civil sanctions): see s 37, Sch 6; and **ADMINISTRATIVE LAW**.

3 Ie to fail to discharge a duty imposed by the Health and Safety at Work etc Act 1974 ss 2-6 (general duties of employers etc: see PARA 420 et seq): s 33(1)(a).

4 Ie to fail to discharge a duty imposed by the Health and Safety at Work etc Act 1974 s 7 (duties of employees: see PARA 446): s 33(1)(a).

5 Ie to contravene the Health and Safety at Work etc Act 1974 s 8 (duty not to interfere with things: see PARA 446): s 33(1)(b).

6 Ie to contravene the Health and Safety at Work etc Act 1974 s 9 (duty not to charge employees for things done or provided pursuant to the relevant statutory provisions: see PARA 420): s 33(1)(b). As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

7 As to health and safety regulations see PARAS 424-425.

8 Health and Safety at Work etc Act 1974 s 33(1)(c) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 11, Sch 18).

9 Ie to contravene provisions relating to the Health and Safety at Work etc Act 1974 s 14 (power of the Health and Safety Executive to direct investigations and inquiries: see PARA 398): 33(1)(d). As to the Health and Safety Executive see PARA 361 et seq.

10 Ie to contravene provisions relating to the Health and Safety at Work etc Act 1974 s 20 or s 25 (requirements imposed by inspectors: see PARAS 376, 380): s 33(1)(e). As to the meaning of 'inspector' see PARA 375 note 2.

11 Ie to prevent persons from appearing before an inspector or answering his questions under the Health and Safety at Work etc Act 1974 s 20(2) (see PARA 376 note 19): s 33(1)(f).

12 Health and Safety at Work etc Act 1974 s 33(1)(g). See PARAS 377 note 8, 378 note 10; and see *Deary v Mansion Hide Upholstery Ltd* [1983] ICR 610, [1983] IRLR 195, DC.

13 Health and Safety at Work etc Act 1974 s 33(1)(h) (amended by the Consumer Protection Act 1987 s 36, Sch 3 para 6); and see PARA 376 note 5.

14 Ie to contravene a requirement imposed by a notice under the Health and Safety at Work etc Act 1974 s 27(1) (notice by the Executive requiring information: see PARA 369): s 33(1)(i).

15 Ie to disclose information in contravention of the Health and Safety at Work etc Act 1974 s 27(4) (see **TRADE AND INDUSTRY**) or s 28 (see PARA 382): s 33(1)(j).

16 Health and Safety at Work etc Act 1974 s 33(1)(k)(i).

17 Health and Safety at Work etc Act 1974 s 33(1)(k)(ii).

18 As to the meaning of 'deception' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 310.

19 Health and Safety at Work etc Act 1974 s 33(1)(l).

20 Health and Safety at Work etc Act 1974 s 33(1)(m) (amended by the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I).

21 Health and Safety at Work etc Act 1974 s 33(1)(n); and see PARA 375 text and note 10.

22 Ie to fail to comply with a court order made under the Health and Safety at Work etc Act 1974 s 42 (see PARA 857): s 33(1)(o).



23 Certain specific provisions as to offences under the relevant statutory provisions have been repealed: eg the Factories Act 1961 s 164 (prosecution of offences), repealed by the Factories Act 1961 (Repeals and Modifications) Regulations 1974, SI 1974/1941, reg 2(a), Sch 1 and the Factories Act 1961 etc (Repeals) Regulations 1976, SI 1976/2004, except in relation to offences committed before 1 January 1977 and offences under the Factories Act 1961 s 135 (repealed by the Wages Act 1986 ss 11, 32(2), Sch 1, Sch 5 Pt III).

24 See PARAS 861-876.

25 See the HSE Enforcement Guide (England and Wales) (2003; updated October 2008) which is not, however, intended to provide legal guidance to members of the public. At the date at which this title states the law, the guide was available on the Health and Safety Executive's internet site, accessible at [www.hse.gov.uk](http://www.hse.gov.uk). As to the Health and Safety Executive's enforcement policy see the Executive's Enforcement Policy Statement published in February 2009 and also accessible at [www.hse.gov.uk](http://www.hse.gov.uk). As to the institution of proceedings see PARA 856.

26 The code is issued under the Prosecution of Offences Act 1985 s 10: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1083. At the date at which this title states the law, the code was accessible on the Crown Prosecution Service's internet site at [www.cps.gov.uk](http://www.cps.gov.uk).

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**853. Mode of trial and penalties for offences under the Health and Safety at Work etc Act 1974.**

A person guilty of an offence consisting of failing to discharge a duty to which he is subject by virtue of the statutory provisions relating to:

- 1802 (1) the general duties of employers to their employees<sup>1</sup>;
- 1803 (2) the general duties of employers and the self-employed<sup>2</sup> to persons other than their employees<sup>3</sup>;
- 1804 (3) the general duties of persons concerned with premises to persons other than their employees<sup>4</sup>; or
- 1805 (4) the general duties of manufacturers and others as regards articles and substances for use at work<sup>5</sup>,

is liable on summary conviction to imprisonment for a term not exceeding 12 months<sup>6</sup> or a fine not exceeding £20,000, or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both<sup>7</sup>. A person guilty of an offence of failing to discharge a duty to which he is subject under the statutory provision relating to the general duties of employees<sup>8</sup> is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum<sup>9</sup>, or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both<sup>10</sup>.

A person guilty of an offence of intentionally or recklessly interfering with or misusing anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions<sup>11</sup> is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000, or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both<sup>12</sup>; while a person guilty of the offence of contravening the duty not to charge employees for things done or provided pursuant to the relevant statutory provisions<sup>13</sup> is liable on summary conviction to a fine not exceeding £20,000, or on conviction on indictment to a fine<sup>14</sup>.

A person guilty of any of the following offences is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000, or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both<sup>15</sup>:

- 1806 (a) contravening health and safety regulations<sup>16</sup> or any requirement or prohibition imposed under any such regulations<sup>17</sup>;
- 1807 (b) contravening provisions relating to requirements imposed by inspectors<sup>18</sup>, preventing persons from appearing before an inspector or answering his questions<sup>19</sup> and contravening improvement or prohibition notices<sup>20</sup>;
- 1808 (c) making a false statement<sup>21</sup>, a false entry in a register, book, notice or other document<sup>22</sup>, or using a false document with intent to deceive or making or possessing a document calculated to deceive<sup>23</sup>;
- 1809 (d) failing to comply with a court order to take remedial action or for forfeiture<sup>24</sup>;

1810 (e) an offence under the existing statutory provisions<sup>25</sup> for which no other penalty is specified<sup>26</sup>.

A person guilty of an offence of contravening provisions relating the Health and Safety Executive's power to direct investigations and inquiries<sup>27</sup> or of falsely pretending to be an inspector<sup>28</sup> is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>29</sup>.

A person guilty of an offence of obstructing an inspector or a customs officer<sup>30</sup> is liable on summary conviction to imprisonment for a term not exceeding 51 weeks<sup>31</sup> or a fine not exceeding level 5 on the standard scale, or both<sup>32</sup>.

A person guilty of an offence of contravening a requirement imposed by a notice by the Health and Safety Executive requiring information<sup>33</sup> is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine<sup>34</sup>.

A person guilty of an offence of making unauthorised disclosures of information<sup>35</sup> is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both<sup>36</sup>.

1    le the general duties imposed by the Health and Safety at Work etc Act 1974 s 2: see PARA 421.

2    As to the meaning of 'self-employed' see PARA 302 note 5.

3    le the general duties imposed by the Health and Safety at Work etc Act 1974 s 3: see PARA 422.

4    le the general duties imposed by the Health and Safety at Work etc Act 1974 s 4: see PARA 423.

5    le the general duties imposed by the Health and Safety at Work etc Act 1974 s 6: see PARA 531.

6    In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' court's powers to imprison), a reference to imprisonment for a term not exceeding 12 months is to be read as a reference to imprisonment for a term not exceeding six months: Health and Safety at Work etc Act 1974 s 33(2), Sch 3A para 2(1), (2) (s 33(2), (3) substituted and Sch 3A added by the Health and Safety (Offences) Act 2008 s 1, Sch 1 para 1 respectively). At the date at which this title states the law, no day had been appointed for the commencement of the Criminal Justice Act 2003 s 154(1).

7    Health and Safety at Work etc Act 1974 s 33(1)(a), Sch 3A para 1 Table (Sch 3A as added: see note 6). Schedule 3A is subject to any provision made by virtue of s 15(6)(d) (power to make health and safety regulations restricting the punishments (other than the maximum fine on conviction on indictment) which can be imposed in respect of any offence mentioned in s 15(6)(c) (ie any offence consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, ss 2-9 or health and safety regulations)) (see PARA 425): s 33(3) (as substituted: see note 6). As to persons liable to imprisonment in the case of an offence by a body corporate see PARA 860.

8    le under the Health and Safety at Work etc Act 1974 s 7: see PARA 446.

<sup>9</sup>    The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)).

10   Health and Safety at Work etc Act 1974 s 33(1)(a), Sch 3A para 1 Table (Sch 3A as added: see note 6).

11   le in contravention of the Health and Safety at Work etc Act 1974 s 8: see PARA 446. As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

12   Health and Safety at Work etc Act 1974 s 33(1)(b), Sch 3A para 1 Table (Sch 3A as added: see note 6).

13   le in contravention of the Health and Safety at Work etc Act 1974 s 9: see PARA 420.

- 14 Health and Safety at Work etc Act 1974 s 33(1)(b), Sch 3A para 1 Table (Sch 3A as added: see note 6).
- 15 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6).
- 16 As to the meaning of 'health and safety regulations' see PARA 424 note 2.
- 17 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(c): see PARA 852 head (4).
- 18 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(e): see PARA 852 head (6).
- 19 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(f): see PARA 852 head (7).
- 20 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(g): see PARA 852 head (8).
- 21 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(k): see PARA 852 head (12).
- 22 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(l): see PARA 852 head (13).
- 23 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(m): see PARA 852 head (14).
- 24 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(o): see PARA 852 head (16).
- 25 As to the existing statutory provisions see PARA 302 note 12.
- 26 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6).
- 27 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(d): see PARA 852 head (5).
- 28 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(n): see PARA 852 head (15).
- 29 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.
- 30 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(h): see PARA 852 head (9).
- 31 In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (alteration of penalties for summary offences), a reference to imprisonment for a term not exceeding 51 weeks is to be read as a reference to imprisonment for a term not exceeding six months: Health and Safety at Work etc Act 1974 Sch 3A para 2(3) (as added: see note 6). At the date at which this title states the law, no day had been appointed for the commencement of the Criminal Justice Act 2003 s 281(5).
- 32 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6).
- 33 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(i): see PARA 852 head (10).
- 34 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6).
- 35 Ie an offence under the Health and Safety at Work etc Act 1974 s 33(1)(j): see PARA 852 head (11).
- 36 Health and Safety at Work etc Act 1974 Sch 3A para 1 Table (as added: see note 6).

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#### **854. Guidelines for penalties under the Health and Safety at Work etc Act 1974.**

In 1999 the Court of Appeal gave guidance on the appropriate level of fines for health and safety offences<sup>1</sup>. The court regarded failure to fulfil the general duties under the Health and Safety at Work etc Act 1974 as particularly serious, as those duties are the foundations for protecting health and safety. Despite the maximum fine in the magistrates' court of £20,000 for breach of those duties, the average level of fines had, historically, been much lower than this and the Court of Appeal expressed the opinion that in general the level of fines had been too low, although in the case in question the total fine imposed (£48,000) was in fact held to be excessive. The following factors were identified as factors to which a court should have regard when sentencing for health and safety offences:

- 1811 (1) how far short of the appropriate standard the defendant fell in failing to meet the 'reasonably practicable' test<sup>2</sup>;
- 1812 (2) the degree of risk and extent of the danger created by the offence;
- 1813 (3) the extent of the breach or breaches, for example whether it was an isolated incident or continued over a period;
- 1814 (4) the defendant's resources and the effect of the fine on its business; the size of the business is not, however, relevant, since the standard of care imposed by the legislation is the same regardless of the size of the company.

Particular aggravating factors are:

- 1815 (a) generally where death is the consequence of a criminal act it is regarded as an aggravating feature of the offence;
- 1816 (b) financial profit made at the expense of proper action to protect employees and the public; a deliberate breach of the health and safety legislation with a view to profit seriously aggravates the offence;
- 1817 (c) a failure to heed warnings.

Particular mitigating factors are:

- 1818 (i) prompt admission of responsibility and a timely plea of guilty;
- 1819 (ii) steps to remedy deficiencies after they are drawn to the defendant's attention;
- 1820 (iii) a good safety record<sup>3</sup>.

The Court of Appeal has subsequently recommended that when the Health and Safety Executive commences proceedings, it should list in writing for the assistance of the court not merely the facts of the case, but the aggravating features, as set out above, which it says exist in the particular case. That document can be served upon the court and upon the defendants for the latter to consider. If the defendant pleads guilty, the defendant should submit a similar document in writing outlining the mitigating features that the court is to take into account. It may well be that by the time the matter comes to court there is agreement between the parties as to which are the relevant mitigating and aggravating features that the court should

take into account. If the plea is upon an agreed basis, that agreed basis should be put into writing so that there is no doubt over the basis upon which the court should pass sentence<sup>4</sup>.

Any fine should reflect not only the gravity of the offence but also the means of the offender, and this applies just as much to corporate defendants as to any other<sup>5</sup>. The objective of prosecutions for health and safety offences in the workplace is to achieve a safe environment for those who work there and for other members of the public who may be affected and the Court of Appeal has emphasised that a fine needs to be large enough to bring that message home, where the defendant is a company, not only to those who manage it but also to its shareholders; furthermore, while it is generally the case that the fine should not be so large as to imperil the earnings of employees or create a risk of bankruptcy, there may be instances where the offences are so serious that the defendant ought not to be in business<sup>6</sup>. Magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence<sup>7</sup>.

The guidance set out above has been followed in a number of subsequent cases<sup>8</sup>. It has also been pointed out that consistency of the level of fine is not a primary sentencing aim, having regard to the different ways in which a fine of the same amount for the same offence might touch different companies of disparate economic strength<sup>9</sup>.

The court is entitled to take a more severe view of breaches of health and safety at work provisions where there is a significant public element, particularly in cases where public safety is entrusted to the private sector. The court is also entitled to take into account the fact that it was fortuitous that the risks generated by failures of such companies had not been greater<sup>10</sup>.

A defendant will also usually be ordered to pay the prosecution costs<sup>11</sup>. Time to pay may be allowed<sup>12</sup>.

1 See *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249, [1999] IRLR 434, CA.

As to the fines for offences under the Health and Safety at Work etc Act 1974 see PARA 853. At the date at which this volume states the law, the Sentencing Guidelines Council, which may frame sentencing guidelines in respect of offences or offenders of a particular category or in respect of a particular matter affecting sentencing (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 638), had not issued any formal sentencing guidelines in relation to health and safety offences.

2 As to what is reasonably practicable see PARA 417.

3 See *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249, [1999] IRLR 434, CA.

4 *R v Friskies Petcare UK Ltd* [2000] 2 Cr App Rep (S) 401, CA.

5 The starting point in obtaining timely and accurate information about a corporate defendant's means is its annual accounts. If a defendant company wishes to make any submission to the court about its ability to pay a fine it should supply copies of its accounts and any other financial information on which it intends to rely in good time before the hearing both to the court and to the prosecution. This will give the prosecution the opportunity to assist the court should the court wish it. Usually accounts need to be considered with some care to avoid reaching a superficial and perhaps erroneous conclusion. Where accounts or other financial information are deliberately not supplied the court will be entitled to conclude that the company is in a position to pay any financial penalty it is minded to impose. Where the relevant information is provided late it may be desirable for sentence to be adjourned, if necessary at the defendant's expense, so as to avoid the risk of the court taking what it is told at face value and imposing an inadequate penalty: *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249 at 253-254, [1999] IRLR 434 at 437, CA. See also *R v Swindell* [2008] All ER (D) 324 (Jul), CA (breach of employee's duty under Health and Safety at Work etc Act 1974 s 7(a); several mitigating factors).

As to sentencing publicly-owned bodies see *R v Guy's and St Thomas' NHS Trust* [2008] EWCA Crim 2187, [2008] 4 All ER 1174, 105 BMLR 108 (where a not-for-profit organisation exists to carry out work for the public benefit and a failing occurs without actual fault on the part of that body but through an act or default of an employee to whom the task had been properly delegated and who had been properly trained, it is not in the public interest for the court to punish the body by the imposition of a financial penalty which would materially impact on its ability to discharge its public duty; however, even where the liability of the body is purely vicarious, a fine may be in the public interest in that it may cause those running the operation to ensure staff

recognise the importance of being kept up to the mark; such theoretical or potential benefit to the public must be balanced against the actual and immediate impact on the body of losing money which it would otherwise be using for services to the public). See also *R v Milford Haven Port Authority* [2000] 2 Cr App Rep (S) 423, [2000] All ER (D) 352, CA; *R v Balfour Beatty Rail Infrastructure Services Ltd* (2006) EWCA Crim 1586, [2007] 1 Cr App Rep (S) 370, [2007] All ER (D) 47 (Jul); *R v Southampton University Hospital NHS Trust* [2006] EWCA Crim 2971, [2007] 2 Cr App Rep (S) 37, [2006] All ER (D) 181 (Nov).

6 *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249 at 254, [1999] IRLR 434 at 438, CA (where it is, however, made clear that the case in question was not such a case).

7 See *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249 at 253-255, [1999] IRLR 434 at 437-438, CA. As to sentencing in magistrates' court see the *Magistrates' Courts Sentencing Guidelines* (2008).

8 See eg *R v Brintons Ltd* [1999] All ER (D) 653, CA (breach of regulations controlling use of asbestos at work); *R v Supremeplan Ltd* [2001] 1 Cr App Rep (S) 244, [2000] All ER (D) 838, CA; *R v Cardiff City Transport Services* [2001] 1 Cr App Rep (S) 141, [2000] All ER (D) 711, CA (both cases on breach of the general duties under the Health and Safety at Work etc Act 1974 s 2); *R v Patchett Engineering Ltd* [2001] 1 Cr App Rep (S) 138, [2000] All ER (D) 710, CA (breach of duty under the Health and Safety at Work etc Act 1974 s 6(1)); *R v Keltbray Ltd* [2001] 1 Cr App Rep (S) 132, [2000] All ER (D) 705, CA (breach of the Construction (Health, Safety and Welfare) Regulations 1996, SI 1996/1592, reg 6 (revoked)); *R v Bill* [2001] EWCA Crim 920, [2001] All ER (D) 24 (Apr) (fine under the Health and Safety at Work etc Act 1974 s 33(3) for breach of the Explosives Act 1875 s 43) (see **EXPLOSIVES** vol 17(2) (Reissue) PARA 911)); *R v Colthrop Board Mills Ltd* [2002] EWCA Crim 520, [2002] All ER (D) 371 (Jan) (breach of duties under the Health and Safety at Work etc Act 1974 s 2(1) and of the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 11 (see PARA 488)); *R v Fresha Bakeries Ltd* [2002] EWCA Crim 1451, [2003] 1 Cr App Rep (S) 202, [2002] All ER (D) 408 (May); *R v Yorkshire Sheeting and Insulation Ltd* [2003] EWCA Crim 458, [2003] 2 Cr App Rep (S) 548, [2003] All ER (D) 369 (Feb) (breach of duties under the Health and Safety at Work etc Act 1974 s 3(1)).

9 However, other Court of Appeal decisions have since been more open to a consistent approach: see eg *R v AGC Automotive UK Ltd* [2007] EWCA Crim 3396, [2008] 2 Cr App Rep (S) 146; *R v TDG (UK) Ltd* [2008] EWCA Crim 1963, [2009] 1 Cr App Rep (S) 478.

10 *R v Jarvis Facilities Ltd* [2005] EWCA Crim 1409, [2006] 1 Cr App Rep (S) 247, [2005] All ER (D) 429 (May) (railway repairs not properly carried out, leading to freight train accident; defendant pleaded guilty to offence contrary to Health and Safety at Work etc Act 1974 ss 3(1), 33; fine of £275,000).

11 See the Prosecution of Offences Act 1985 s 18; *Practice Direction (Costs in Criminal Proceedings)* [2004] All ER (D) 236 (May), CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2063; and see eg *R v F Howe and Son Engineers Ltd* [1999] 2 All ER 249, [1999] IRLR 434, CA; *R v Fresha Bakeries Ltd* [2002] EWCA Crim 1451, [2003] 1 Cr App Rep (S) 202, [2002] All ER (D) 408 (May); *Neville v Gardner Merchant Ltd* (1983) 82 LGR 577, 5 Cr App Rep (S) 349, 148 JP 238, DC (a case on breach of food hygiene legislation); *R v Associated Octel Co Ltd (costs)* [1997] 1 Cr App Rep (S) 435, [1997] Crim LR 144, CA (procedure for objections); *R v Northallerton Magistrates' Court, ex p Dove* [2000] 1 Cr App Rep (S) 136, 163 JP 657, DC (award of costs following a private prosecution; not a health and safety case).

12 See eg *R v Aceblade Ltd (t/a Rand & Asquith Ltd)* [2001] 1 Cr App Rep (S) 366 (Case No 105), CA; *R v Rollco Screw and Rivet Co Ltd* [1999] 2 Cr App Rep (S) 436, [1999] IRLR 439, CA (both confirming that a court can properly fix a longer period for payment of a fine in the case of a corporate defendant than in the case of an individual defendant). When dealing with an individual, a court should not normally impose a financial penalty that requires periodic payments over a longer period than two or three years: see *R v Olliver and Olliver* (1989) 11 Cr App Rep (S) 10, 153 JP 369, CA.

## UPDATE

### 854 Guidelines for penalties under the Health and Safety at Work etc Act 1974

NOTE 1--See also *R v LCH Contracts Ltd* [2009] EWCA Crim 902, [2009] 2 Cr App Rep (S) 665. The Sentencing Guidelines Council has issued the Guideline on *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 638.

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### 855. Time for bringing proceedings.

Proceedings under the Health and Safety at Work etc Act 1974<sup>1</sup> which are triable either summarily or on indictment may be commenced at any time<sup>2</sup>.

So far as summary proceedings are concerned<sup>3</sup>, where (1) a special report on any specified matter is made<sup>4</sup>; (2) a report is made by a person holding an inquiry into any such matter<sup>5</sup>; or (3) a coroner's inquest<sup>6</sup> is held touching the death of any person whose death may have been caused by an accident which happened while he was at work, or by a disease which he contracted or probably contracted at work, or by any accident, act or omission which occurred in connection with the work of any person whatsoever<sup>7</sup>, and in any of these cases it appears from the report or proceedings that any of the relevant statutory provisions<sup>8</sup> was contravened<sup>9</sup> at a time which is material in relation to the subject matter of the report or inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the making of the report or the conclusion of the inquest or inquiry<sup>10</sup>.

Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence is deemed to continue until that thing is done<sup>11</sup>.

Where a person commits an offence under any of the relevant statutory provisions by virtue of any provision or requirement to which he is subject as the designer, manufacturer, importer or supplier of any thing, summary proceedings may be commenced at any time within six months from the date on which there comes to the knowledge of a responsible enforcing authority<sup>12</sup> evidence<sup>13</sup> sufficient in the opinion of that authority to justify a prosecution for that offence<sup>14</sup>.

The time limits are otherwise those provided by the general law<sup>15</sup>.

1    Ie under the Health and Safety at Work etc Act 1974 s 33: see PARA 853.

2    *Kemp v Liebherr GB Ltd* [1987] 1 All ER 885, [1987] ICR 349, DC. As to time limits generally see the Magistrates' Courts Act 1980 s 127(2). Cf the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 6(1) (hearing of a criminal charge against a person must take place within a reasonable time); and see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

In exceptional circumstances, a case may be stayed for excessive delay as an abuse of process: see *A-G's Reference (No 1 of 1990)* [1992] QB 630, 95 Cr App Rep 296, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1047.

3    The following are summary offences only: an offence under the Health and Safety at Work etc Act 1974 s 33(1)(d), (h) or (n): see PARAS 852 heads (5), (9), (15) and 853.

4    Ie a special report made by virtue of the Health and Safety at Work etc Act 1974 s 14(2) (see PARA 397) on any matter to which s 14 applies: s 34(1)(a) (amended by SI 2008/960). As to the general law relating to the time for bringing summary proceedings see the Magistrates' Courts Act 1980 s 127; and **MAGISTRATES**.

5    Ie a report made by virtue of the Health and Safety at Work etc Act 1974 s 14(2A) (see PARA 397): s 34(1)(b) (amended by SI 2008/960).

6    As to coroner's inquests see **CORONERS** vol 9(2) (2006 Reissue) PARA 949 et seq.

7    See the Health and Safety at Work etc Act 1974 s 34(1)(c).



- 8 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.
- 9 As to the meaning of 'contravention' see PARA 369 note 6.
- 10 Health and Safety at Work etc Act 1974 s 34(1).
- 11 Health and Safety at Work etc Act 1974 s 34(2).
- 12 'Responsible enforcing authority' means an enforcing authority (see PARA 352 note 2) within whose field of responsibility the offence in question lies, whether by virtue of the Health and Safety at Work etc Act 1974 s 35 (see PARA 856) or otherwise: s 34(4).
- 13 For these purposes (1) a certificate of an enforcing authority stating that such evidence came to its knowledge on a specified date is conclusive evidence of that fact (Health and Safety at Work etc Act 1974 s 34(3)(a)); and (2) a document purporting to be such a certificate and seemingly signed by or on behalf of the enforcing authority in question is presumed to be such a certificate unless the contrary is proved (s 34(3)(b)).
- 14 Health and Safety at Work etc Act 1974 s 34(3), (4).
- 15 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1047. See also note 2.

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### 856. Venue and consent to proceedings.

If necessary, for the purpose of bringing the offence within the field of responsibility of any enforcing authority<sup>1</sup>, or conferring jurisdiction on any court to entertain proceedings for the offence, an offence under any of the relevant statutory provisions<sup>2</sup>, committed in connection with any plant<sup>3</sup> or substance<sup>4</sup>, may be treated as having been committed at the place where that plant or substance is for the time being<sup>5</sup>.

Proceedings for an offence under any of the relevant statutory provisions may not be instituted except by an inspector<sup>6</sup> or by the Environment Agency<sup>7</sup> or by or with the consent of the Director of Public Prosecutions<sup>8</sup>.

Where a person over the age of 18<sup>9</sup> appears or is brought before a magistrates' court on an information charging him with an offence triable either way, there is an initial procedure to ascertain whether he intends to plead guilty or not guilty, known as 'plea before venue' proceedings<sup>10</sup>. Where he indicates that he intends to plead not guilty, the court will then go on to determine the mode of trial<sup>11</sup>. Where the court then proceeds to try the offence summarily, the mode of trial may subsequently be changed in certain circumstances<sup>12</sup>. Where, on the other hand, he indicates that he intends to plead guilty, the court proceeds as if the proceedings constituted from the beginning the summary trial of the information<sup>13</sup>. In that case he may be convicted without the court hearing the evidence<sup>14</sup>. Alternatively, the court may hold a hearing (known as a 'Newton' hearing) to determine the facts for sentencing purposes<sup>15</sup>. If the offence is regarded as particularly serious, he may be committed to the Crown Court for sentence<sup>16</sup>.

In complex cases which are to be tried on indictment a pre-trial hearing may be held<sup>17</sup>. The procedure on such hearings is governed by Part III of the Criminal Procedure and Investigations Act 1996<sup>18</sup>.

Under the Criminal Procedure Rules<sup>19</sup> and Part I of the Criminal Procedure and Investigations Act 1996, provision is made for disclosure in criminal proceedings by both the prosecutor and the accused<sup>20</sup>.

1 As to the meaning of 'enforcing authority' see PARA 352 note 2. As to the field of responsibility of such an authority see PARA 375 note 3.

2 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

3 As to the meaning of 'plant' see PARA 302 note 7.

4 As to the meaning of 'substance' see PARA 302 note 7.

5 Health and Safety at Work etc Act 1974 s 35. As to venue generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE; MAGISTRATES**. For a health and safety case tried on indictment where bias on the part of two jurors was alleged see *R v Thoron* [2001] EWCA Crim 1797, [2001] All ER (D) 419 (Jul).

Proceedings for any offence under the Health and Safety at Work etc Act 1974 s 33 (see PARAS 852-853), being an offence to which that section applies by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain: see art 9(1); and PARA 305 note 22.

6 As to the meaning of 'inspector' see PARA 375 note 2. This power cannot be delegated: *R (on the application of WH Smith Ltd) v Croydon Justices* [2000] All ER (D) 1694, [2001] EHLR 183, DC (information laid by solicitor to the local authority, and not by a duly appointed inspector, invalid).

7 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

8 Health and Safety at Work etc Act 1974 s 38 (amended by the Environment Act 1995 s 120, Sch 22 para 30(7)).

9 Is or a corporate defendant: see **MAGISTRATES** vol 29(2) (Reissue) PARA 666.

10 See the Magistrates' Courts Act 1980 s 17A; and **MAGISTRATES** vol 29(2) (Reissue) PARA 657. As to health and safety offences triable either way see PARAS 852-853. As to adjournment of plea before venue proceedings see s 17C; and **MAGISTRATES** vol 29(2) (Reissue) PARA 708.

11 See the Magistrates' Courts Act 1980 ss 18-20; and **MAGISTRATES** vol 29(2) (Reissue) PARA 659.

12 See the Magistrates' Courts Act 1980 s 25; and **MAGISTRATES** vol 29(2) (Reissue) PARA 664.

13 See the Magistrates' Courts Act 1980 s 17A(6); and **MAGISTRATES** vol 29(2) (Reissue) PARA 657.

14 See the Magistrates' Courts Act 1980 s 9(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 726.

15 See *R v Newton* (1982) 77 Cr App R 13, 4 Cr App Rep (S) 388, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1353-1354. A Newton hearing may also be held where a person has pleaded guilty in the Crown Court. The Court of Appeal has recommended that such a procedure should routinely be adopted in health and safety prosecutions: see *R v Friskies Petcare UK Ltd* [2000] 2 Cr App Rep (S) 401, CA.

16 See the Powers of Criminal Courts (Sentencing) Act 2000 s 3 et seq; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1123 et seq; **MAGISTRATES**.

17 See eg *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324, 147 Sol Jo LB 1426.

18 See the Criminal Procedure and Investigations Act 1996 Pt III (ss 28-38); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1251.

19 See the Criminal Procedure Rules 2005, SI 2005/384, Pt 21; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1110.

20 See the Criminal Procedure and Investigations Act 1996 Pt I (ss 1-21A); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1386.

## UPDATE

### 856 Venue and consent to proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 19--SI 2005/384 replaced: Criminal Procedure Rules 2010, SI 2010/60.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(2) OFFENCES UNDER GENERAL HEALTH AND SAFETY LEGISLATION/857. Judicial power to order remedial action or forfeiture.

### **857. Judicial power to order remedial action or forfeiture.**

Where a person is convicted of an offence under any of the relevant statutory provisions<sup>1</sup> in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment<sup>2</sup>, order him, within such time as may be fixed by the order<sup>3</sup>, to take such steps as may be specified in the order for remedying those matters<sup>4</sup>. Where such an order is made, that person is not liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or extended by the court<sup>5</sup>.

Remedial orders may also be made under the Corporate Manslaughter and Corporate Homicide Act 2007<sup>6</sup>.

Where a person is convicted of an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of any of the relevant statutory provisions) in contravention of any of the relevant statutory provisions, the court by or before which the person is convicted of the offence may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as it may order<sup>7</sup>.

1 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 As to penalties generally see PARA 853.

3 Such time may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended: Health and Safety at Work etc Act 1974 s 42(2).

4 Health and Safety at Work etc Act 1974 s 42(1). Failure to comply with such an order is an offence: s 33(1)(o). As to penalties see PARA 853.

5 Health and Safety at Work etc Act 1974 s 42(3).

6 See the Corporate Manslaughter and Corporate Homicide Act 2007 s 9; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

7 Health and Safety at Work etc Act 1974 s 42(3A), (4) (added and amended respectively by the Health and Safety (Offences) Act 2008 s 2(1), Sch 3 para 2(2), (3)). The court may not order anything to be so forfeited where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made: Health and Safety at Work etc Act 1974 s 42(5). Failure to comply with such an order is an offence: s 33(1)(o). As to penalties see PARA 853.

For other powers of forfeiture see eg the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, Sch 5 para 14; and PARA 543; the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, Sch 5 para 4; and PARA 554.

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### **858. Onus of proof and evidence in general.**

In any proceedings for an offence under any of the relevant statutory provisions<sup>1</sup> consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or so far as is reasonably practicable<sup>2</sup>, or to use the best practicable means to do something, it is for the accused to prove<sup>3</sup> (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement<sup>4</sup>.

Where any of the relevant statutory provisions requires an entry to be made in any register or other record, and it is made, the entry is, as against the person by or on whose behalf it was made, admissible as evidence of the facts stated in it<sup>5</sup>. Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact is admissible as evidence that that provision has not been observed<sup>6</sup>.

1 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 As to what is 'practicable' or 'reasonably practicable' see PARA 417. The question whether a particular step was not reasonably practicable is a matter of fact: *Bowes v Sedgefield District Council* [1981] ICR 234, CA. The burden of proof of showing that a particular step is reasonably practicable is usually on the defendant in civil proceedings, such that a defendant has to plead the defence specifically, and give particulars if required, if he is to be permitted to raise it: *Bowes v Sedgefield District Council*; *Larner v British Steel plc* [1993] 4 All ER 102, [1993] ICR 551, CA. Evidence that failure to take such a step is universal practice in the trade is not conclusive that it is not reasonably practicable to take such a step: *Martin v Boulton and Paul (Steel Construction) Ltd* [1982] ICR 366, DC.

3 This statutory determination of the onus of proof applies only to criminal proceedings, but in a civil claim for breach of statutory duty the same determination of the onus has been achieved by judicial decision: see *Bowes v Sedgefield District Council* [1981] ICR 234, CA; and PARA 416. As to the nature of the burden thus imposed upon a defendant in criminal proceedings or a civil claim see PARA 416 text and notes 9-11.

4 Health and Safety at Work etc Act 1974 s 40. The onus of proof which is placed on a defendant to establish that he did all that was reasonably practicable in the circumstances does not interfere with the presumption of innocence principle: *Davies v Health and Safety Executive* [2002] EWCA Crim 2949, [2003] IRLR 170, [2002] All ER (D) 275 (Dec). As to evidence as to the cause of injury see eg *Smith v Gatwick Airport Ltd* [2003] All ER (D) 120 (Feb). As to the approach of the court when considering the application of the onus of proof, see *R v Chagot Ltd (t/a Contract Services)* [2007] EWCA Crim 3032, [2008] 2 All ER 1077, [2008] ICR 517; affd [2008] UKHL 73, [2009] 2 All ER 645, [2009] 1 WLR 1, applying *R v P Ltd* [2007] EWCA Crim 1937, [2008] ICR 96, [2007] All ER (D) 137 (Jul).

5 Health and Safety at Work etc Act 1974 s 41(1).

6 Health and Safety at Work etc Act 1974 s 41(2). For provisions relating to the admissibility of codes of practice under the Health and Safety at Work etc Act 1974 s 16 see PARA 427.

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### **859. Offences due to the fault of another.**

Where the commission by any person of an offence under any of the relevant statutory provisions<sup>1</sup> is due to<sup>2</sup> the act or default<sup>3</sup> of some other person, that other person is guilty of the offence, and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person<sup>4</sup>. Nothing in the relevant statutory provisions, however, operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee<sup>5</sup> of his, or of a person appointed by him<sup>6</sup> to give health and safety assistance<sup>7</sup>.

Particular provision is made in this respect with regard to offences under the following regulations:

- 1821 (1) the Pressure Systems Safety Regulations 2000<sup>8</sup>;
- 1822 (2) the Confined Spaces Regulations 1997<sup>9</sup>;
- 1823 (3) the Ionising Radiations Regulations 1999<sup>10</sup>;
- 1824 (4) the Offshore Installations (Safety Case) Regulations 2005<sup>11</sup>;
- 1825 (5) the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996<sup>12</sup>.

1 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 There must be a causal connection between the act or default and the offence committed: *Tarleton Engineering Co Ltd v Natrass* [1973] 3 All ER 699, [1973] 1 WLR 1261, DC (decided upon the cognate provisions of the Trade Descriptions Act 1968 s 23).

3 This means wrongful act or default: *Noss Farm Products Ltd v Lilico* [1945] 2 All ER 609, DC; *Lamb v Sunderland and District Creamery Ltd* [1951] 1 All ER 923, DC. Accordingly, the fact that what the other person did subsequently became unlawful is not enough: *Noss Farm Products Ltd v Lilico* [1945] 2 All ER 609, DC. Mens rea or negligence need not, however, be proved if the original offence is constituted without proof of mens rea or negligence, as the case may be: *Lindley v George W Horner & Co Ltd* [1950] 1 All ER 234, DC; *Lamb v Sunderland and District Creamery Ltd* [1951] 1 All ER 923, DC; *Lester v Balfour Williamson Merchant Shippers Ltd* [1953] 2 QB 168, [1953] 1 All ER 1146, DC; *Fisher v Barrett and Pomeroy (Bakers) Ltd* [1954] 1 All ER 249, [1954] 1 WLR 351, DC.

4 Health and Safety at Work etc Act 1974 s 36(1). The offence to be charged, and of which the defendant may be convicted, is the offence under s 33 (see PARAS 852-853), although it must at the same time be made clear to the defendant that the prosecution is being brought under s 36: *West Cumberland By-Products Ltd v DPP* [1988] RTR 391, DC.

Where there would be or have been the commission of an offence under s 33 (see PARAS 852-853) by the Crown but for the fact that s 33 does not bind the Crown, and it is due to the act or default of a person other than the Crown, that person is guilty of the offence which the Crown would be committing or would have committed, and may be charged with and convicted of it accordingly: s 36(2). The provisions of s 36(1), (2) are subject to any provision made by virtue of s 15(6) (which relates to provisions which may be made by health and safety regulations: see PARA 425): s 36(3). See further the text and notes 5-13. The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of s 36: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, 2007/1353, art 2.

5 As to the meaning of 'employee' see PARA 302 note 4.

6 Ie appointed by him under the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 7: see PARA 436.

7 Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 21.

8 In any proceedings for an offence for a contravention of any of the provisions of the Pressure Systems Safety Regulations 2000, SI 2000/128 (see PARA 544 et seq), it is, subject to reg 16(2), (3), a defence for the person charged to prove (1) that the commission of the offence was due to the act or default of another person not being one of his employees (the 'other person'); and (2) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence: reg 16(1). The person charged is not, however, without the leave of the court, entitled to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial, where the proceedings are in England or Wales, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 16(2). Where a contravention of the 2000 regulations by any person is due to the act or default of the other person, that other person is guilty of the offence which would, but for any defence under this provision available to the first-mentioned person, be constituted by the act or default: reg 16(3). As to the meaning of 'in writing' see PARA 544 note 19. As to the Health and Safety Executive see PARA 361 et seq.

9 In any proceedings for an offence for a contravention of the Confined Spaces Regulations 1997, SI 1997/1713, reg 5(3) (see PARA 599) it is a defence for the person charged to prove (1) that the contravention was due to the act or default of another person not being one of his employees (the 'other person'); and (2) that he took all reasonable precautions and exercised all due diligence to avoid the contravention: reg 7(1). The person charged is not, without leave of the court, entitled to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial, where the proceedings are in England or Wales, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 7(2). Where a contravention of the provision referred to in reg 7(1) by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence under reg 7 available to the first-mentioned person, be constituted by the act or default: reg 7(3).

10 In any proceedings against an employer for an offence under the Ionising Radiations Regulations 1999, SI 1999/3232, reg 27(2) (sealed sources and articles containing or embodying radioactive substances: see PARA 652) it is a defence for that employer to prove that (1) he had received and reasonably relied on a written undertaking from the supplier of the article concerned that it complied with the requirements of reg 27(2); and (2) he had complied with the requirements of reg 27(3): reg 36(3). In any proceedings against an employer of an outside worker for a breach of a duty under the 1999 regulations it is a defence for that employer to show that (a) he had entered into a contract in writing with the employer who had designated an area as a controlled area and in which the outside worker was working or was to work for that employer to perform that duty on his behalf; and (b) the breach of duty was a result of the failure of the employer referred to in head (a) above to fulfil that contract: reg 36(4). In any proceedings against any employer who has designated a controlled area in which any outside worker is working or is to work for a breach of a duty under the 1999 regulations it is a defence for that employer to show that (i) he had entered into a contract in writing with the employer of an outside worker for that employer to perform that duty on his behalf; and (ii) the breach of duty was a result of the failure of the employer referred to in head (i) above to fulfil that contract: reg 36(5). The person charged is not, however, entitled to rely on the defence referred to in reg 36(4) or (5) without leave of the court, unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing that he intends to rely on the defence and this notice must be accompanied by a copy of the contract on which he intends to rely and, if that contract is not in English, an accurate translation of that contract into English: reg 36(6). Where a contravention of the 1999 regulations by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence under reg 36 available to the first-mentioned person, be constituted by the act or default: reg 36(7) (substituted by SI 2001/2975).

For other special defences regarding contravention of the Ionising Radiations Regulations 1999, SI 1999/3232, see reg 36(1), (2); and PARA 648.

11 In any proceedings for an offence for a contravention of any of the provisions of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, regs 19-21 (see PARA 731) it is, subject to reg 22(2), (3), a defence for the person charged to prove (1) that the commission of the offence was due to the act or default of another person not being one of his employees (the 'other person'); and (2) that he took all reasonable precautions, and exercised all due diligence, to avoid the commission of the offence: reg 22(1). The person charged is not, however, entitled without the leave of the court to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial, where the proceedings are in England or Wales, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 22(2). For the purpose of enabling the other person to be charged with and convicted of the offence by virtue of the Health and Safety at Work etc Act 1974 s 36, a person who establishes a defence under the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 22 is nevertheless to be treated for the purposes of the Health and Safety at Work etc Act 1974 s 36 as having committed the offence: Offshore Installations (Safety Case) Regulations SI 2005/3117, reg 22(3).

12 In any proceedings for an offence for a contravention of any of the provisions of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, regs 5, 6 (see PARA 720) it is, subject to

reg 22(2), (3), a defence for the person charged to prove (1) that the commission of the offence was due to the act or default of another person not being one of his employees (the 'other person'); and (2) that he took all reasonable precautions, and exercised all due diligence, to avoid the commission of the offence: reg 22(1). The person charged is not, however, entitled without the leave of the court to rely on this defence unless, within a period ending seven clear days before the hearing to determine mode of trial, where the proceedings are in England or Wales, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession: reg 22(2). For the purpose of enabling the other person to be charged with and convicted of the offence by virtue of the Health and Safety at Work etc Act 1974 s 36, a person who establishes a defence under the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 22 is nevertheless to be treated for the purposes of the Health and Safety at Work etc Act 1974 s 36 as having committed the offence: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 22(3).



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## **860. Offences by bodies corporate.**

Where an offence under any of the relevant statutory provisions<sup>1</sup> committed by a body corporate<sup>2</sup> is proved to have been committed with the consent or connivance<sup>3</sup> of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>4</sup>.

Where the affairs of a body corporate are managed by its members, the provision described above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that body<sup>5</sup>.

1 As to the meaning of 'relevant statutory provisions' see PARA 302 note 24.

2 As to the criminal liability of corporations see generally **CORPORATIONS; CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38. Quare whether the corporation must be convicted as a pre-requisite to a director's personal liability under the provisions set out in the text. As to whether criminal liability for health and safety offences may be transferred on the dissolution of one NHS trust and the transfer of its liabilities to another under the relevant National Health Service legislation see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324, 147 Sol Jo LB 1426 (no transfer, in that case, of criminal liability).

3 As to the meaning of 'consent' and 'connivance' see eg *A-G's Reference (No 1 of 1995)* [1996] 4 All ER 21, [1996] 1 WLR 970, CA (discussing the Banking Act 1987 s 96(1) (now repealed), which provided that 'Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence'); *Huckerby v Elliot* [1970] 1 All ER 189, DC, per Ashworth J (discussing those terms in the context of gaming licences).

4 Health and Safety at Work etc Act 1974 s 37(1). In the case of a health and safety offence which carries a possible penalty of imprisonment (see PARA 853) such persons are thus at risk of imprisonment. This provision refers to any neglect in duty, however constituted, to which the contravention of the safety provisions is attributable: see *Armour v Skeen* 1977 SLT 71, [1977] IRLR 310, where a regional council's director of roads was held liable for an employee's fatal fall from a scaffold because he had breached the duty which he owed contractually to the employer to prepare a general safety policy. However, it is only those with real authority, who have power and responsibility to decide corporate policy and strategy (as opposed to those responsible merely for the day-to-day running of a business) who come within the definition of director, manager, secretary etc, and thus where an assistant general manager of a bookshop who had had no training in management, health and safety at work, or fire precautions, was left in charge of the shop in the absence of his general manager and the shop was found to be in serious breach of the requirements of the fire certificate in force for the premises, he had a defence to a charge under the Fire Precautions Act 1971 s 23 (repealed) (which was in similar terms to the Health and Safety at Work etc Act 1974 s 37): *R v Boal* [1992] QB 591, [1992] 3 All ER 177, CA. If an officer has no actual knowledge of the state of facts, the question is whether he should have been put on inquiry by reason of the surrounding circumstances: *R v P Ltd* [2007] EWCA Crim 1937, [2008] ICR 96.

In a small company, where the directors are likely also to be the shareholders, the court should be alert to avoid imposing double punishment, although the directors still have a personal responsibility which cannot be passed on to the company: *R v Rollco Screw and Rivet Co Ltd* [1999] 2 Cr App Rep (S) 436, [1999] IRLR 439, CA.

5 Health and Safety at Work etc Act 1974 s 37(2).

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### **(3) OFFENCES UNDER FACTORIES LEGISLATION**

#### **861. Construction of penal provisions of the Factories Act 1961.**

The Factories Act 1961 is framed in such a way as to make it certain that in the event of there having been a contravention<sup>1</sup> someone can be found who can be convicted of an offence<sup>2</sup>. It is an Act which contains penal provisions and, although a person is not to be put in peril upon an ambiguity, yet penal sections of such legislation must be construed reasonably according to the fair and ordinary meaning of language, recognising that the measures are remedial for the protection of workmen<sup>3</sup>.

Although the provisions set out above and in the following paragraphs<sup>4</sup> remain on the statute book, proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>5</sup>.

1 'Contravention' includes a failure to comply with any provision and 'contravene' is construed accordingly: Factories Act 1961 s 176(1).

2 *Meigh v Wickenden* [1942] 2 KB 160 at 165, [1942] 2 All ER 68 at 69, DC, per Viscount Caldecote LCJ.

3 See *Thurogood v Van Den Berghs and Jurgens Ltd* [1951] 2 KB 537 at 547, [1951] 1 All ER 682 at 687, CA, per Cohen LJ, citing *London and North Eastern Rly Co v Berriman* [1946] AC 278, [1946] 1 All ER 225, HL, per Lord Simonds; *Franklin v Gramophone Co Ltd* [1948] 1 KB 542, [1948] 1 All ER 353, CA, per Somervell LJ; *Harrison v National Coal Board* [1951] AC 639, [1951] 1 All ER 1102, HL, per Lord Porter; *Tuck & Sons v Priestner* (1887) 19 QBD 629, CA. As to the construction of penal statutes generally see **STATUTES**.

4 See PARAS 862-872.

5 See PARA 852 text and note 23.

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## **862. General liability of occupier.**

In the event of any contravention<sup>1</sup>, in or in connection with or in relation to a factory<sup>2</sup>, of the provisions of the Factories Act 1961 or of any regulation or order made under it, the occupier of the factory is guilty of an offence unless the contravention is one for which the owner<sup>3</sup> is made responsible, in which case the latter is guilty of an offence<sup>4</sup>. The Act does not define who is the occupier of a factory, but the person who runs the factory, who regulates and controls the work that is done there and who is responsible for the fulfilment of the provisions of the Act within it is the occupier<sup>5</sup>; thus a receiver and manager appointed under hand by debenture holders was the occupier of the company's factory<sup>6</sup>. In the event of a contravention by any person of any regulation or order made under the Act which expressly imposes any duty upon him, that person is guilty of an offence and the occupier or owner, as the case may be, is not guilty of an offence by reason only of the contravention of the provision imposing the duty, unless it is proved that he failed to take all reasonable steps to prevent the contravention<sup>7</sup>.

If the occupier of a factory avails himself of any exception allowed by or under the Act and fails to comply with any condition attached to the exception, he is deemed to have contravened the provisions of the Act<sup>8</sup>. If any persons are employed in a factory otherwise than in accordance with the provisions of the Act or any regulation or order made under it, there is deemed to be a separate contravention in respect of each person so employed<sup>9</sup>.

Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>10</sup>.

1 As to the meaning of 'contravention' see PARA 861 note 1.

2 As to the meaning of 'factory' see PARA 318 et seq.

3 As to the meaning of 'owner' see PARA 322 note 2.

4 See the Factories Act 1961 s 155(1), which is subject to the provisions of s 155(2)-(4) (see the text to notes 7-9); s 155(1).

5 *Ramsay v Mackie* (1904) 7 F 106, Ct of Sess, adopted in *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 All ER 665, CA. In an appropriate case, the question may be what 'occupier' means in regulations which contain a definition: see *Smith v Cammell Laird & Co Ltd* [1940] AC 242 at 261, [1939] 4 All ER 381 at 392, HL, per Lord Russell of Killowen.

6 *Meigh v Wickenden* [1942] 2 KB 160, [1942] 2 All ER 68, DC. Other instances are *Turner v Courtaulds Ltd* [1937] 1 All ER 467, DC (company liable as occupier for breach of regulations with regard to a switchboard on which work was being done by another company but which had not been handed over); *Smith v Cammell Laird & Co Ltd* [1940] AC 242, [1939] 4 All ER 381, HL (shipbuilding yard where various contractors were employed); *Rippon v Port of London Authority and J Russell & Co* [1940] 1 KB 858, [1940] 1 All ER 637 (public dry dock); *Wilkinson v Rea Ltd* [1941] 1 KB 688, [1941] 2 All ER 50, CA (contractors repairing ship in graving dock). See also *Fitton v Wood* (1875) 32 LT 554 (owner of brickyard who rented yard to contractor who made bricks for him held to be occupier).

7 Factories Act 1961 s 155(2) (amended by SI 1975/1012). The liability of the owner or occupier in respect of the same matters by virtue of some other provision is unaffected: Factories Act 1961 s 155(2). Thus where employees were responsible for breaches of the Construction (Working Places) Regulations 1966 (revoked) the employers were still liable because reg 3(1) imposed a separate liability upon them: *Davies v Camerons Industrial Services Ltd* [1980] 2 All ER 680, DC.

8 Factories Act 1961 s 155(3).

9     Factories Act 1961 s 155(4).

10    See PARA 852 text and note 23.

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### **863. Liability of owner or hirer of machine.**

Where in a factory<sup>1</sup> the owner or hirer of a machine or implement moved by mechanical power<sup>2</sup> is some person other than the occupier<sup>3</sup> of the factory, the owner or hirer is deemed to be the occupier of the factory so far as respects any offence under the Factories Act 1961<sup>4</sup> committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer<sup>5</sup>.

1 As to the meaning of 'factory' see PARA 318 et seq.

2 As to mechanical power see PARA 325 note 1.

3 As to the occupier of a factory see PARA 862 text and notes 5-6.

4 Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974: see PARA 852 text and note 23.

5 Factories Act 1961 s 163; and see *Whalley v Briggs Motor Bodies Ltd* [1954] 2 All ER 193, [1954] 1 WLR 840.

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**864. Fine for offence by parent.**

If a young person<sup>1</sup> is employed in any factory<sup>2</sup> in contravention of the provisions of the Factories Act 1961, the young person's parent<sup>3</sup> is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale unless it appears to the court that the contravention occurred without the parent's consent, connivance or wilful default<sup>4</sup>.

Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>5</sup>.

1 As to the meaning of 'young person' see PARA 316 note 1.

2 As to the meaning of 'factory' see PARA 318 et seq.

3 'Parent' means a parent of a child or young person or any person who is not a parent of his but who has parental responsibility for him (within the meaning of the Children Act 1989: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134), and includes any person having direct benefit from the young person's wages: Factories Act 1961 s 176(1) (amended by the Children Act 1989 s 108(5), Sch 13 para 15).

4 Factories Act 1961 s 158 (amended by SI 1974/1941; and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 853 note 29.

5 See PARA 852 text and note 23.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/865. Liability in respect of tenement factories.

### **865. Liability in respect of tenement factories.**

'Tenement factory' means any premises where mechanical power<sup>1</sup> from any prime mover<sup>2</sup> within the close or curtilage of the premises is distributed for use in manufacturing processes to different parts of the same premises occupied by different persons in such manner that those parts constitute in law separate factories<sup>3</sup>.

The owner<sup>4</sup> of a tenement factory, whether or not he is one of the occupiers, is stated to be responsible instead of the occupier<sup>5</sup> for any contravention<sup>6</sup> of specified safety and welfare provisions of the Factories Act 1961<sup>7</sup> which have, however, now largely been repealed and replaced by health and safety regulations<sup>8</sup>. For these purposes the whole of a tenement factory is deemed to be one factory in the occupation of the owner<sup>9</sup>.

The provisions of the Factories Act 1961, so far as they are applicable and have not been applied in the manner indicated previously, apply to any part of a tenement factory which is not comprised within any of the separate factories as if that part were a factory and the owner were the occupier<sup>10</sup>.

Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>11</sup>.

1 As to mechanical power see PARA 325 note 1.

2 As to the meaning of 'prime mover' see PARA 313 note 2.

3 Factories Act 1961 s 176(1). As to what constitutes a separate factory in law see PARA 320.

4 As to the meaning of 'owner' see PARA 322 note 2.

5 As to the occupier of a factory see PARA 862 text and notes 5-6.

6 As to the meaning of 'contravention' see PARA 861 note 1.

7 Ie the provisions of the Factories Act 1961 Pt II with respect to the provision and maintenance of fencing and safety appliances, the construction, maintenance, testing and examination of machinery or plant, the construction and maintenance of floors, passages and stairs. The only extant provisions of Pt II are now those of s 39 (precautions as to water-sealed gasholders: see PARA 513).

8 See the Factories Act 1961 s 121(1) (amended by the Employment Act 1989 s 29(4), Sch 7 Pt I; and by SI 1974/1941; SI 1988/1657; SI 1995/2923). As to the meaning of 'machinery' see PARA 313 note 3. The Factories Act 1961 s 121(1) does not apply to any contravention arising from the use in a tenement of any fencing, appliances, machinery or plant, if the use is a matter outside the control of the owner: s 121(2).

9 Factories Act 1961 s 121(1).

10 Factories Act 1961 s 121(6).

11 See PARA 852 text and note 23.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/866. Where part of a building is a separate factory.

### **866. Where part of a building is a separate factory.**

Where a part of a building is let off as a separate factory<sup>1</sup>, but it is not part of a tenement factory<sup>2</sup>, certain provisions of the Factories Act 1961<sup>3</sup>, which have now been largely repealed and replaced by health and safety regulations, are stated to apply to any part of the building used for the purposes of the factory but not comprised in it<sup>4</sup>. The owner<sup>5</sup> of the building is responsible for any contravention<sup>6</sup> of such provisions so applying<sup>7</sup>.

1 As to the meaning of 'factory' see PARA 318 et seq; and as to what is a separate factory see PARA 320.

2 As to the meaning of 'tenement factory' see PARA 865.

3 I.e the provisions specified in the Factories Act 1961 s 122(2). The provisions so specified are the provisions of Pt II with respect to prime movers, transmission machinery, hoists and lifts, chains, ropes and lifting tackle, cranes and other lifting machines, the construction and maintenance of floors, passages and stairs, the keeping free from obstruction and slippery substances of floors, steps, stairs, passages and gangways: s 122(2) (amended by SI 1974/1941; SI 1989/2169). The only extant provisions of the Factories Act 1961 Pt II are now those of s 39 (precautions as to water-sealed gasholders: see PARA 513).

4 Factories Act 1961 s 122(1)(a).

5 As to the meaning of 'owner' see PARA 322 note 2. The owner's responsibility is limited in respect of certain of the specified provisions (see note 3); see s 122(3)-(5) (s 122(4) amended by SI 1989/2169). As to the occupier of a factory and his responsibilities see PARA 862.

6 As to the meaning of 'contravention' see PARA 861 note 1.

7 Factories Act 1961 s 122(1)(b), (2)(a) (s 122(2)(a) as amended: see note 3).



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/867. Proceedings against persons other than occupiers or owners.

**867. Proceedings against persons other than occupiers or owners.**

Where any person is substituted for another with respect to any provisions of the Factories Act 1961, any order, summons, notice or proceeding required or authorised to be served on or taken in relation to that other person, is required or authorised to be served on or taken in relation to the substituted person<sup>1</sup>. Proceedings for offences under the Factories Act 1961 are, however, now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>2</sup>.

1 Factories Act 1961 s 162.

2 See PARA 852 text and note 23.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/868. Special provisions as to evidence.

### **868. Special provisions as to evidence.**

If a person is found in a factory<sup>1</sup> at any time at which work is going on or the machinery<sup>2</sup> is in motion, except during the intervals for meals or rest, he is deemed, until the contrary is proved, to have been then employed in the factory for the purposes of the Factories Act 1961, unless the factory is one in which the only persons employed are members of the same family dwelling there<sup>3</sup>.

Where in any proceedings under the 1961 Act<sup>4</sup> with respect to a young person<sup>5</sup> it appears to the court that the young person is apparently of or below the age alleged by the informant, it lies on the accused to prove that the young person is not of or below that age<sup>6</sup>.

1 As to the meaning of 'factory' see PARA 318 et seq.

2 As to the meaning of 'machinery' see PARA 313 note 3.

3 Factories Act 1961 s 166(1).

4 Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974: see PARA 852 text and note 23.

5 As to the meaning of 'young person' see PARA 316 note 1. For the purposes of proceedings in respect of the employment of children in contravention of the Employment of Women, Young Persons, and Children Act 1920 s 1, or any other enactment prohibiting the employment of children which is incorporated with the Factories Act 1961, references in Pt XII (ss 155-171) to young persons include references to children within the meaning of any such enactment: s 167 (amended by the Education Act 1973 s 1(4), Sch 2 Pt I).

6 Factories Act 1961 s 166(2).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/869. Exclusion of Part I of the Arbitration Act 1996.

**869. Exclusion of Part I of the Arbitration Act 1996.**

Part I of the Arbitration Act 1996<sup>1</sup> does not apply to proceedings under the Factories Act 1961<sup>2</sup> except in so far as it may be applied by regulations under the 1961 Act<sup>3</sup>.

1     le the Arbitration Act 1996 Pt I (ss 1-84): see **ARBITRATION** vol 2 (2008) PARA 1209 et seq.

2     Proceedings for offences under the Factories Act 1961 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974: see PARA 852 text and note 23.

3     Factories Act 1961 s 171 (substituted by the Arbitration Act 1996 s 107(1), Sch 3 para 14). No such regulations have been made.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/870. Modification of agreements.

### **870. Modification of agreements.**

If by reason of an agreement between the owner<sup>1</sup> and the occupier<sup>2</sup> of premises, the whole or any part of which has been let as a factory<sup>3</sup>, either of them is prevented from carrying out any structural or other alterations in the premises which are necessary for compliance with the provisions of the Factories Act 1961 or of any regulation or order made under it, or in order to conform with any standard or requirement imposed by or under that Act, he may apply to the county court<sup>4</sup>. After hearing the parties and witnesses, the court may make such an order setting aside or modifying the terms of the agreement as it considers just and equitable<sup>5</sup> in the circumstances of the case<sup>6</sup>.

1 As to the meaning of 'owner' see PARA 322 note 2.

2 As to the occupier of a factory see PARA 862 text to notes 5-6.

3 As to the meaning of 'factory' see PARA 318 et seq.

4 Factories Act 1961 s 169. The provision for application to the county court excludes the High Court from exercising original jurisdiction under the enactment: see *Horner v Franklin* [1905] 1 KB 479, CA; *Stuckey v Hooke* [1906] 2 KB 20, CA, decided respectively under the Factory and Workshop Act 1891 s 7(2) (repealed) and the Factory and Workshop Act 1901 s 101(8) (repealed). As to the procedure see PARA 872.

5 In determining what is 'just and equitable' the county court should take the terms of the agreement into consideration: *Horner v Franklin* [1905] 1 KB 479, CA.

6 Factories Act 1961 s 169.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/871. Apportionment of expenses.

### **871. Apportionment of expenses.**

Where the whole or part of any premises has been let as a factory<sup>1</sup>, and any structural or other alterations are required in order to comply with the provisions of the Factories Act 1961 or any regulation or order made under it, or to conform with any standard or requirement imposed by or under that Act, and the owner<sup>2</sup> or occupier<sup>3</sup>, as the case may be, alleges that the whole or part of the expenses ought to be borne by the occupier or owner, the owner or occupier may apply<sup>4</sup> to the county court<sup>5</sup>. After hearing the parties and any witnesses whom they may desire to call, the court may make such an order concerning the expenses or their apportionment as it considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties<sup>6</sup>. Alternatively, at the request of the owner or occupier, the court may determine the lease<sup>7</sup>.

1 As to the meaning of 'factory' see PARA 318 et seq.

2 As to the meaning of 'owner' see PARA 322 note 2.

3 As to the occupier of a factory see PARA 862 text to notes 5-6.

4 In the case of a former provision (the Factory and Workshop Act 1901 s 101(8) (repealed)) enabling a magistrates' court to apportion expenses, it was said that 'may apply' really means 'must apply': see *Stuckey v Hooke* [1906] 2 KB 20, CA, following *Horner v Franklin* [1905] 1 KB 479 at 488, CA, per Vaughan Williams LJ.

5 Factories Act 1961 s 170. No proceedings in the High Court may be instituted for the recovery of a contribution: *Horner v Franklin* [1905] 1 KB 479, CA; *Stuckey v Hooke* [1906] 2 KB 20, CA. As to the procedure see PARA 872.

6 Factories Act 1961 s 170. The question is not determined by the terms of the tenancy alone (*Horner v Franklin* [1905] 1 KB 479, CA) and apportionment may be made even though the lease contains a general covenant to pay all outgoing (s) (*Monk v Arnold* [1902] 1 KB 761, DC). On the construction of a covenant to pay outgoing (s) see also *Arding v Economic Printing and Publishing Co Ltd* (1898) 79 LT 622, CA; *Goldstein v Hollingsworth* [1904] 2 KB 578; *Morris v Beal* [1904] 2 KB 585, DC; but the two last-mentioned cases were doubted by Fletcher Moulton LJ in *Stuckey v Hooke* [1906] 2 KB 20, CA. See further **LANDLORD AND TENANT**.

7 Factories Act 1961 s 170.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(3) OFFENCES UNDER FACTORIES LEGISLATION/872. Procedure on county court application.

## **872. Procedure on county court application.**

The procedure on an application to a county court for an order under the provisions of the Factories Act 1961 for modification of an agreement and apportionment of expenses<sup>1</sup> will be governed by the general procedure under the Civil Procedure Rules ('CPR')<sup>2</sup>. Costs will be in the discretion of the court<sup>3</sup>.

1    le an application under the Factories Act 1961 ss 169, 170: see PARAS 870-871.

2    As to procedure in county courts see generally **CIVIL PROCEDURE**.

3    As to county court costs see generally **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(4) OFFENCES UNDER OFFICES, SHOPS AND RAILWAY PREMISES LEGISLATION/873. Offences; in general.

## **(4) OFFENCES UNDER OFFICES, SHOPS AND RAILWAY PREMISES LEGISLATION**

### **873. Offences; in general.**

It is a defence<sup>1</sup> for a person charged with a contravention<sup>2</sup> of a provision of the Offices, Shops and Railway Premises Act 1963 or of regulations made under it to prove that he used all due diligence<sup>3</sup> to secure compliance with those provisions<sup>4</sup>.

Although the provisions set out above and in the following paragraphs<sup>5</sup> remain on the statute book, proceedings for offences under the 1963 Act are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974<sup>6</sup>.

1 The burden of proof laid upon the defendant is less onerous than that resting upon the prosecution as to proving the offence, and may be discharged by satisfying the court of the probability of what the defendant is called upon to prove: *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA; *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA.

2 As to the meaning of 'contravention' in the Offices, Shops and Railway Premises Act 1963 see PARA 335 note 1.

3 The question whether the defendant has or has not used all due diligence is a question of fact, but on a case stated the High Court will interfere if there was no evidence to support a finding of fact upon this point: *RC Hammett Ltd v Crabb* (1931) 145 LT 638, DC. The failure of the directors of a limited company to use due diligence is the failure of the company: *Pearce v Cullen* (1952) 96 Sol Jo 132, DC. See also *Rogers v Barlow & Son* (1906) 94 LT 519, DC; *RC Hammett Ltd v LCC* (1933) 97 JP 105, DC.

4 Offices, Shops and Railway Premises Act 1963 s 67. There are still substantive duties under ss 42(2), (3), (5), 43(2) in relation to common parts of buildings: see PARA 328. There are also offences under s 59 (see PARA 382).

Section 63 provides that in the event of a contravention, in relation to any premises to which the Offices, Shops and Railway Premises Act 1963 applies (see PARA 327 et seq), of ss 4, 5, 6(1)-(5), 7-12, 13(1), 14-19 (all now repealed, with savings), of s 23 (as amended and partially repealed) (prohibition of heavy work: see PARA 583), and of other repealed provisions, or of regulations made under s 50 (repealed), the occupier of the premises is, subject to two exceptions, guilty of an offence: see s 63(1)(a), (2), (3) (s 63(2) amended by SI 1976/2005 and SI 1995/2923; Offices, Shops and Railway Premises Act 1963 s 63(3) added by SI 1974/1943). The exceptions exist where the contravention is one for which, by or by virtue of the 1963 Act (1) some other person or persons is or are made responsible as well as the occupier, in which case that other person or each of those other persons and the occupier is guilty of an offence; and (2) some other person or persons is or are made responsible instead of the occupier, in which case that other person or each of those other persons is guilty of an offence: Offices, Shops and Railway Premises Act 1963 s 63(1)(b), (c). Further, if, without reasonable excuse, a person removes a notice or other document which is for the time being posted or displayed in any premises in pursuance of a provision of the 1963 Act or of regulations made under it, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 69 (amended by the Criminal Damage Act 1971 s 11(8), Schedule Pt II; SI 1974/1943; and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 853 note 29. As to destroying or damaging property generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334 et seq. The Offices, Shops and Railway Premises Act 1963 ss 63, 69 have not been repealed but appear to be of no practical significance.

5 See PARAS 874-876.

6 See PARA 852 text and note 23.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(4) OFFENCES UNDER OFFICES, SHOPS AND RAILWAY PREMISES LEGISLATION/874. Appeals.

#### **874. Appeals.**

A person aggrieved by an order made by a magistrates' court on determining a complaint under the Offices, Shops and Railway Premises Act 1963<sup>1</sup> may appeal to the Crown Court<sup>2</sup>.

1 Proceedings for offences under the Offices, Shops and Railway Premises Act 1963 are now brought in accordance with the regime established by the Health and Safety at Work etc Act 1974: see PARA 852 text and note 23.

2 Offices, Shops and Railway Premises Act 1963 s 72 (amended by the Courts Act 1971 s 56(2), Sch 9 Pt I). The dismissal of a complaint by justices is 'an order made by a magistrates' court on determining a complaint' from which an appeal lies to the Crown Court: *R v Recorder of Oxford, ex p Brasenose College* [1970] 1 QB 109, [1969] 3 All ER 428, DC. As to the distinction between complaints and informations see **MAGISTRATES** vol 29(2) (Reissue) PARA 681.



Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(4) OFFENCES UNDER OFFICES, SHOPS AND RAILWAY PREMISES LEGISLATION/875. Modification of agreements.

#### **875. Modification of agreements.**

A person, who, by reason of the terms of an agreement or lease relating to any premises, is prevented from carrying out or doing there any structural or other alterations or other thing whose carrying out or doing is requisite in order to secure compliance with a provision of the Offices, Shops and Railway Premises Act 1963, or of regulations made under it, which is, or will become, applicable to the premises, may apply to the county court<sup>1</sup> within whose jurisdiction the premises are situated, and the court may make such an order setting aside or modifying the terms of the agreement or lease as the court considers just and equitable in the circumstances of the case<sup>2</sup>.

1 As to the procedure for making an application to a county court see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 116 et seq.

2 Offices, Shops and Railway Premises Act 1963 s 73(1) (amended by SI 1976/2005). See also PARA 870 (similar procedure under the Factories Act 1961).

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(4) OFFENCES UNDER OFFICES, SHOPS AND RAILWAY PREMISES LEGISLATION/876. Apportionment of expenses.

### **876. Apportionment of expenses.**

Where the act of carrying out or doing in any premises any structural or other alterations<sup>1</sup> involves a person with an interest in the premises in expense or increased expense, and that person alleges that the whole or part of the expense or, as the case may be, the increase, ought to be borne by some other person with an interest in the premises, the first-mentioned person may apply to the county court within whose jurisdiction the premises are situated<sup>2</sup>. Having regard to the terms of any agreement or lease relating to the premises, the court may then, by order, give such directions with respect to the persons by whom the expense or increase is to be borne, and as to the proportions in which it is to be borne by them and, if need be, directions for modification of the terms of any such agreement or lease, so far as concerns rent payable in respect of the premises, as the court considers just and equitable in the circumstances of the case<sup>3</sup>.

1 Or other thing, the carrying out or doing of which is requisite to secure compliance with provisions of the Offices, Shops and Railway Premises Act 1963.

2 Offices, Shops and Railway Premises Act 1963 s 73(2). As to such modifications see PARA 875.

3 Offices, Shops and Railway Premises Act 1963 s 73(2). For a similar procedure under the Factories Act 1961 see PARA 871. As to the procedure on an application to a county court see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 116 et seq.

Halsbury's Laws of England/HEALTH AND SAFETY AT WORK (VOLUME 52 (2009) 5TH EDITION, PARAS 301-530; VOLUME 53 (2009) 5TH EDITION, PARAS 531-888)/8. CRIMINAL OFFENCES/(5) OFFENCES UNDER MINES LEGISLATION/877. Offences in general.

## **(5) OFFENCES UNDER MINES LEGISLATION**

### **877. Offences in general.**

A contravention<sup>1</sup>, in relation to a mine<sup>2</sup>, of:

- 1826 (1) any provision of the Mines and Quarries Acts 1954 and 1969<sup>3</sup>, or of orders or regulations made thereunder, which does not provide expressly that a person is guilty of an offence<sup>4</sup>; or
- 1827 (2) a direction, prohibition, restriction or requirement given or imposed by a notice served under or by virtue of those Acts by an inspector<sup>5</sup>; or
- 1828 (3) a condition attached to an exemption, consent, approval or authority granted or given under or by virtue of those Acts by the Health and Safety Executive<sup>6</sup> or an inspector; or
- 1829 (4) a requirement or prohibition imposed by or under health and safety regulations<sup>7</sup> which expressly apply to all mines, any class of mine to which the mine belongs or the mine,

renders each of the following persons<sup>8</sup> guilty of an offence, subject to certain statutory defences<sup>9</sup>: (a) the owner<sup>10</sup> of the mine; (b) any person to whom the owner has by written instructions delegated his statutory responsibility for the particular matter in question; (c) the manager of the mine and any person treated as such<sup>11</sup> for the purposes of the legislation<sup>12</sup>. No manager or person treated as a manager, however, is guilty of an offence by reason of a contravention by the owner of a statutory provision expressly imposing a duty, requirement or prohibition on the owner, a prohibition, restriction or requirement expressly imposed on the owner by virtue of an inspector's notice, or a requirement or prohibition expressly imposed on the owner by health and safety regulations<sup>13</sup>.

Where a statutory provision<sup>14</sup> relating to a mine does not expressly provide that a person is to be guilty of an offence but expressly imposes a duty or requirement on a person or a class of persons to which he belongs, or prohibits a person or class of persons or all persons from doing a specified act, a contravention of such provision by that person or a person of that class renders the actual offender as well as the persons mentioned in heads (1) to (4) above guilty of an offence<sup>15</sup>.

Where a statutory provision relating to mines expressly provides that a person is to be guilty of an offence, a contravention of that provision is personal to the offender and no other person is liable as a principal<sup>16</sup>. In such a case the defence that it was impracticable to avoid or prevent the contravention does not apply<sup>17</sup>.

The duty imposed on the owner to secure that a mine is managed, worked, planned and laid out in accordance with the relevant statutory provisions<sup>18</sup>, whether or not such provisions expressly impose duties on him or on some other person<sup>19</sup>, does not apply in relation to the provisions of the Mines and Quarries Act 1954 which expressly provide that a person is to be guilty of an offence<sup>20</sup>.

If persons are employed at a mine otherwise than in accordance with the statutory provisions relating to employment<sup>21</sup>, there is a separate contravention in respect of each person unlawfully employed<sup>22</sup>.

Without prejudice to the operation of the statutes governing the trial of those who aid and abet the commission of offences<sup>23</sup>, it is an offence under the Mines and Quarries Act 1954 to induce or procure, or consent to or connive at, the commission of an offence under the Mines and Quarries Acts 1954 and 1969<sup>24</sup>.

- 1 'Contravention', in relation to the matters noted in heads (1)-(4) in the text, includes a failure to comply with the provision, direction, prohibition, restriction, requirement or condition in question, and 'contravened' is to be construed accordingly: Mines and Quarries Act 1954 s 182(1) (amended by SI 1974/2013 and SI 1999/2024).
- 2 As to the meaning of 'mine' see PARA 343 note 1.
- 3 As to those Acts see PARA 343 note 2.
- 4 Certain provisions of the Mines and Quarries Act 1954 do so provide: eg s 65 (safety lamps: see PARA 802), s 66 (smoking: see PARA 803).
- 5 As to the meaning of 'inspector' see PARA 375 note 2.
- 6 As to the Health and Safety Executive see PARA 361 et seq.
- 7 As to the meaning of 'health and safety regulations' see PARA 424 note 2; definition applied by the Mines and Quarries Act 1954 s 182(1) (definition added by SI 1974/2013).
- 8 Where all or some of such persons are charged and found to be liable, the court has no discretion to convict some and dismiss the information against others: *Wing v Dent Main Colliery Co Ltd* [1924] 2 KB 389, DC.
- 9 See PARA 878.
- 10 As to the meaning of 'owner' PARA 395 note 5.
- 11 Ie a substitute manager appointed by the owner of a mine when the manager is temporarily not readily available or the post of manager is vacant (see the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 8(3)-(5)), or the manager of part of a mine (see reg 15(1)). See further PARA 748. Under-managers and managers' assistants were formerly included but the statutory provisions relating to these posts have been repealed by reg 41(1), (3), Sch 3 Pt I.
- 12 Mines and Quarries Act 1954 s 152(1) (amended by SI 1974/2013); Mines and Quarries (Tips) Act 1969 s 1(3)(a).
- 13 Mines and Quarries Act 1954 s 152(4) (amended by SI 1974/2013 and SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a).
- 14 Ie including a provision of the relevant health and safety regulations: see note 7.
- 15 Mines and Quarries Act 1954 s 152(3) (amended by SI 1974/2013 and SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a).
- 16 Cf the Mines and Quarries Act 1954 s 152(1).
- 17 Cf the Mines and Quarries Act 1954 s 157(a); see PARA 878.
- 18 As to the relevant statutory provisions see PARA 302 note 24.
- 19 Ie by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(2), (5): see PARA 749.
- 20 Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897, reg 6(6). Those provisions are listed in Sch 1 as follows: the Mines and Quarries Act 1954 ss 65, 66 (1), (3), (6), 153, 160. See PARAS 802-803; text and notes 23-24; and PARA 879.
- 21 Ie the provisions of the Mines and Quarries Act 1954 and orders and regulations made under that statute.
- 22 Mines and Quarries Act 1954 s 154(1) (amended by SI 1999/2024).

23     le the Accessories and Abettors Act 1861 s 8 and the Magistrates' Courts Act 1980 s 44: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 49 et seq; **MAGISTRATES**.

24     Mines and Quarries Act 1954 s 153 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 11); Mines and Quarries (Tips) Act 1969 s 1(3)(a).

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## **878. Defences.**

In any legal proceedings to recover damages and in any prosecution, in so far as the proceedings are or prosecution is based on an allegation of a contravention<sup>1</sup>, in relation to a mine<sup>2</sup>, of (1) a provision of the Mines and Quarries Acts 1954 and 1969<sup>3</sup>, of an order made thereunder or of regulations (except a provision which expressly provides that a person is to be guilty of an offence<sup>4</sup>); or (2) a direction, prohibition, restriction or requirement given or imposed by a notice served under or by virtue of those Acts by an inspector<sup>5</sup>; or (3) a condition attached to an exemption, consent, approval or authority granted or given under or by virtue of those Acts by the Health and Safety Executive<sup>6</sup> or an inspector; or (4) a requirement imposed by or under the health and safety regulations<sup>7</sup>, it is a defence to prove that it was impracticable<sup>8</sup> to avoid or prevent the contravention<sup>9</sup>.

Where a person is by virtue of his office charged with an offence in relation to the contravention by some other person of (a) a statutory provision relating to a mine which expressly imposes on that other person, either personally or as a member of a class, a duty or requirement or expressly prohibits that other person, personally or as a member of a class, or all persons, from doing a specified act; or (b) a prohibition, restriction or requirement imposed on him by virtue of an inspector's notice; or (c) a requirement or prohibition expressly imposed on him by or under appropriate health and safety regulations, it is a defence for the person charged to prove that he used all due diligence<sup>10</sup> to secure compliance with the provision or notice<sup>11</sup>.

1 As to the meaning of 'contravention' see PARA 877 note 1.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 As to those Acts see PARA 343 note 2.

4 See PARA 877 note 4.

5 As to inspectors see PARA 877 note 5.

6 As to the Health and Safety Executive see PARA 361 et seq.

7 As to health and safety regulations see PARA 877 note 7.

8 As to what is impracticable see PARA 417.

9 Mines and Quarries Act 1954 s 157 (amended by SI 1974/2013 and SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a). This defence is disapplied to eg the Mines (Safety of Exit) Regulations 1988, SI 1988/1729 (see reg 11; and PARA 757), the Electricity at Work Regulations 1989, SI 1989/635, regs 18-27, Sch 1 (see reg 28; and PARA 805), and the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (see PARA 748 et seq) (see reg 39).

10 As to due diligence cf PARA 873 note 3.

11 See the Mines and Quarries Act 1954 s 156 (amended by SI 1974/2013 and SI 1999/2024).

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### **879. Particular offences.**

If a young person or child<sup>1</sup> is employed at a mine<sup>2</sup> in contravention of the statutory provisions<sup>3</sup>, his parent<sup>4</sup> as well as any other person who may be liable<sup>5</sup> is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale, unless it appears to the court that the contravention occurred without the consent, connivance or wilful default of the parent<sup>6</sup>.

1 As to the meanings of 'young person' and 'child' see PARA 316 note 1.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 It is now only the Employment of Women, Young Persons, and Children Act 1920 s 1, which, so far as it relates to mines, is incorporated with the Mines and Quarries Act 1954: Employment of Women, Young Persons, and Children Act 1920 s 1(6) (amended by virtue of the Mines and Quarries Act 1954 s 188, Sch 4); Mines and Quarries Act 1954 s 166 (amended by the Education Act 1973 s 1(4), Sch 2 Pt I; and by SI 1999/2024). See PARA 337. The specific provisions of the Mines and Quarries Act 1954 relating to the employment of young persons at mines and quarries have been repealed.

4 'Parent' means a parent of a young person or any person who is not a parent of his but who has parental responsibility for him (within the meaning of the Children Act 1989: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134), and includes, in relation to any young person, a person having direct benefit from his wages: Mines and Quarries Act 1954 s 182(1) (amended by the Children Act 1989 s 108(5), Sch 13 para 13).

5 Liability under the Employment of Women, Young Persons, and Children Act 1920 is imposed on the employer. As to the liability of owners and managers under the Mines and Quarries Act 1954 see PARA 877.

6 Mines and Quarries Act 1954 s 160 (amended by SI 1999/2024; and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 853 note 29.

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### **880. Duty to report result of proceedings.**

The owner<sup>1</sup> or manager of a mine<sup>2</sup> who institutes proceedings against an employee for any statutory offence in relation to mines<sup>3</sup> must, within 21 days after the conclusion of the trial and also within 21 days after the conclusion of any appeal proceedings, including an application for a quashing order<sup>4</sup>, give notice in writing of the result of the proceedings to an authorised inspector<sup>5</sup>.

1 As to the meaning of 'owner' see PARA 395 note 5.

2 As to the meaning of 'mine' see PARA 343 note 1.

3 Ie under the Mines and Quarries Acts 1954 and 1969; as to those Acts see PARA 343 note 2.

4 Ie an application to quash a conviction by a quashing order: Mines and Quarries Act 1954 s 165(2) (amended by virtue of SI 2004/1033); and see CPR 54.2(c); and **JUDICIAL REVIEW** vol 61 (2010) PARAS 687, 693 et seq.

5 Mines and Quarries Act 1954 s 165(1) (amended by SI 1999/2024); Mines and Quarries (Tips) Act 1969 s 1(3)(a). As to inspectors see PARA 877 note 5.



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## **(6) OFFENCES UNDER REGULATIONS RELATING TO SUPPLY**

### **881. Supply of machinery and safety components.**

Any person who:

- 1830 (1) contravenes or fails to comply with the general requirements of the Supply of Machinery (Safety) Regulations 2008 as to supply and putting into service<sup>1</sup>;
- 1831 (2) contravenes or fails to comply with the general requirements of those regulations as to conformity assessment procedures<sup>2</sup>;
- 1832 (3) contravenes or fails to comply with the requirements as to protection of the CE marking<sup>3</sup>;
- 1833 (4) contravenes or fails to comply with a requirement<sup>4</sup> to take (or refrain from taking) specified action within a specified period to bring a deficiency as regards CE marking to an end<sup>5</sup>,

is guilty of an offence<sup>6</sup>. A person guilty of an offence under head (1) or (2) above is, with certain exceptions<sup>7</sup>, liable on summary conviction to a fine not exceeding the statutory maximum<sup>8</sup> or to imprisonment for a term not exceeding three months or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both<sup>9</sup>. A person guilty of an offence under head (3) or (4) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>10</sup>.

Subject to the following provisions, in proceedings for an offence under the 2008 regulations, a person who is shown to have taken all reasonable steps and exercised all due diligence to avoid committing the offence has a defence<sup>11</sup>. Where, in any proceedings against a person for such an offence, that defence involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, such a defence may not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings, that person has served a notice on the person bringing the proceedings<sup>12</sup>. Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time it is served<sup>13</sup>. A person is not entitled to rely on the defence so provided by reason of that person's reliance on information supplied by another, unless it is shown that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to the steps which that person took and those which might reasonably have been taken, for the purpose of verifying the information, and to whether that person had any reason to disbelieve the information<sup>14</sup>.

Where the commission by a person of an offence under the 2008 regulations is due to anything which another person did or failed to do in the course of a business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person<sup>15</sup>. Where a body corporate commits an offence and it is proved that the offence was committed with the consent or connivance of an officer of the body corporate<sup>16</sup> or as a result of the negligence of an officer of the body corporate, the officer, as well as the body corporate, is guilty of the offence<sup>17</sup>.

1     le who contravenes or fails to comply with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 7-9: see PARA 533.

2     le who contravenes or fails to comply with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, regs 10-12: see PARA 538.

<sup>3</sup>    le who contravenes or fails to comply with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 15. As to the meaning of 'CE marking' see PARA 533 note 4. No person may affix the CE marking to machinery which does not comply with the 2005 regulations: reg 15(1). No person may affix to machinery any marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking (or both): reg 15(2). Other markings may be affixed to machinery which bears the CE marking only if the visibility, legibility or meaning of the CE marking is not impaired as a result: reg 15(3).

4     le a notice under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 21(3)(c).

5     le under the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 21(3): see PARA 542 text to note 23.

6     Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22(1).

7     A person who is guilty of an offence as a result of having contravened or failed to comply with the Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 7(2)(b), (e) or (f) (relating to the technical file, EC declaration of conformity and CE marking: see PARA 533), or reg 8 (supply of partly completed machinery: see PARA 533) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 22(3). As to the standard scale see PARA 853 note 29.

8     As to the statutory maximum see PARA 853 note 9.

9     Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22(2).

10    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 22(3).

11    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 23(1).

12    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 23(2).

13    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 23(3).

14    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 23(4).

15    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 24(1).

16    For these purposes, a reference to an officer of a body corporate includes a reference to (1) a director, manager, secretary or other similar officer of the body corporate; (2) a person purporting to act as a director, manager, secretary or other similar officer; and (3) if the affairs of the body corporate are managed by its members, a member: Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 24(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

17    Supply of Machinery (Safety) Regulations 2008, SI 2008/1597, reg 24(2).

Criminal proceedings relating to unsafe machinery may be brought either under the 2008 regulations or under the Health and Safety at Work Act 1974: see *R (on the application of Junttan Oy) v Bristol Magistrates' Court* [2003] UKHL 55, [2004] 2 All ER 555, [2003] ICR 1475.

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## **882. Simple pressure vessels.**

A person who contravenes the safety requirements relating to simple pressure vessels<sup>1</sup> is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both<sup>2</sup>. A person who:

- 1834 (1) contravenes any of the provisions requiring documentation relating to simple pressure vessels to be retained<sup>3</sup>;
- 1835 (2) fails or refuses to give the required information or explanation<sup>4</sup>; or
- 1836 (3) fails to comply with a court order requiring him to remedy certain matters<sup>5</sup>,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>6</sup>.

Where a person is convicted of an offence under the above provisions in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters<sup>7</sup>. The time fixed by such an order may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this provision, as the case may be<sup>8</sup>. Where a person is so ordered to remedy any matters, that person is not guilty of an offence under the above provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time so allowed<sup>9</sup>.

Subject to the following provisions, in proceedings against any person for an offence under the above provisions it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>10</sup>. Where, however, in any proceedings against any person for such an offence the defence so provided involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, that person is not, without the leave of the court, entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice<sup>11</sup> on the person bringing the proceedings<sup>12</sup>. Furthermore, a person is not entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular:

- 1837 (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 1838 (b) to whether he had any reason to disbelieve the information<sup>13</sup>.

Where the commission by any person of an offence under the above provisions is due to the act or default committed by some other person in the course of any business of his, the other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first-mentioned person<sup>14</sup>. Where a body corporate is guilty of an offence under the Simple Pressure Vessels (Safety) Regulations 1991<sup>15</sup> in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he,

as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>16</sup>.

1     Ie who contravenes the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 5: see PARA 553.

2     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 20(1). As to the standard scale see PARA 853 note 29.

3     Ie who contravenes the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 15: see PARA 553.

4     Ie information or explanation required by the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 14(5): see PARA 553.

5     Ie an order under the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 21: see the text and notes 7-9.

6     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 20(2) (amended by SI 1994/3098).

7     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 21(1).

8     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 21(2).

9     Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 21(3).

10    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 22(1).

11    Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it: Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 22(3).

12    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 22(2).

13    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 22(4).

14    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 23(1).

15    Ie under the Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, including where it is so guilty by virtue of reg 23(1).

16    Simple Pressure Vessels (Safety) Regulations 1991, SI 1991/2749, reg 23(2). Where the affairs of a body corporate are managed by its members, reg 23(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 23(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

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### **883. Pressure equipment and assemblies.**

Any person who:

- 1839 (1) contravenes or fails to comply with the provisions relating to:  
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62. (a) the general duties of a responsible person<sup>1</sup> who places pressure equipment or assemblies on the market or puts them into service<sup>2</sup>; or
63. (b) the prohibition on the supply of unsafe pressure equipment or assemblies by a person who is not a responsible person in relation to them<sup>3</sup>;
- 339
- 1840 (2) fails to supply or retain a copy of the declaration of conformity<sup>4</sup>; or
- 1841 (3) fails to comply with the requirements that marking, labelling, information and instructions are to be in English in specified circumstances<sup>5</sup>,

is guilty of an offence<sup>6</sup>. A person guilty of an offence under head (1) above is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both<sup>7</sup>; and a person guilty of an offence under head (2) or head (3) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>8</sup>.

Subject to the following provisions, in proceedings against any person for any such offence it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>9</sup>. Where in any proceedings against any person for such an offence the defence so provided involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, that person is not, without the leave of the court, entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice on the person bringing the proceedings<sup>10</sup>. That notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it<sup>11</sup>. A person is not, however, entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular:

- 1842 (i) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 1843 (ii) to whether he had any reason to disbelieve the information<sup>12</sup>.

Where the commission by any person of any such offence is due to an act or default committed by some other person in the course of any business<sup>13</sup> of his, the other person is guilty of the offence and may be proceeded against and punished by virtue of this provision whether or not proceedings are taken against the first-mentioned person<sup>14</sup>. Furthermore, where a body corporate is guilty of an offence under the relevant regulations<sup>15</sup> in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be

attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly<sup>16</sup>.

1 As to the meaning of 'responsible person' for these purposes see PARA 559 note 2.

2 Ie who contravenes or fails to comply with the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(1), 8(1) or 9(1): see PARA 559.

3 Ie who contravenes or fails to comply with the Pressure Equipment Regulations 1999, SI 1999/2001, reg 10: see PARA 559.

4 Ie as required by the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(4) or reg 8(4): see PARA 559 notes 8, 12.

5 Ie the requirements of the Pressure Equipment Regulations 1999, SI 1999/2001, reg 7(5) or reg 8(5): see PARA 559 note 6.

6 Pressure Equipment Regulations 1999, SI 1999/2001, reg 25.

7 Pressure Equipment Regulations 1999, SI 1999/2001, reg 26(1) (substituted by SI 2002/1267). As to the statutory maximum see PARA 853 note 9.

8 Pressure Equipment Regulations 1999, SI 1999/2001, reg 26(2). As to the standard scale see PARA 853 note 29.

9 Pressure Equipment Regulations 1999, SI 1999/2001, reg 27(1).

10 Pressure Equipment Regulations 1999, SI 1999/2001, reg 27(2).

11 Pressure Equipment Regulations 1999, SI 1999/2001, reg 27(3).

12 Pressure Equipment Regulations 1999, SI 1999/2001, reg 27(4).

13 As to the meaning of 'business' see PARA 558 note 5.

14 Pressure Equipment Regulations 1999, SI 1999/2001, reg 28(1).

15 Ie an offence under the Pressure Equipment Regulations 1999, SI 1999/2001, including where it is so guilty by virtue of reg 28(1): reg 28(2).

16 Pressure Equipment Regulations 1999, SI 1999/2001, reg 28(2). Where the affairs of a body corporate are managed by its members, reg 28(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 28(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

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#### **884. Lifts and safety components.**

Any person who:

- 1844 (1) contravenes or fails to comply with the general or specific duties imposed by the Lifts Regulations 1997<sup>1</sup>; or
- 1845 (2) fails to supply or retain a copy of the declaration of conformity<sup>2</sup>,

is guilty of an offence<sup>3</sup>. A person guilty of an offence under head (1) above is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both<sup>4</sup>; and a person guilty of an offence under head (2) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>5</sup>.

Subject to the following provisions, in proceeding against any person for such an offence it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>6</sup>. Where in any proceedings against any person for such an offence the defence so provided involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, that person is not, however, entitled without the leave of the court to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice<sup>7</sup> on the person bringing the proceedings<sup>8</sup>. Moreover, a person is not entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular:

- 1846 (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 1847 (b) to whether he had any reason to disbelieve the information<sup>9</sup>.

Where the commission by any person of an offence under the above provisions is due to the act or default committed by some other person in the course of any business of his, the other person is guilty of the offence and may be proceeded against and punished by virtue of this provision whether or not proceedings are taken against the first-mentioned person<sup>10</sup>.

<sup>1</sup> He contravenes or fails to comply with the Lifts Regulations 1997, SI 1997/831, reg 8, reg 9, reg 10 or reg 11(1) or (2): see PARAS 563-564.

<sup>2</sup> He as required by the Lifts Regulations 1997, SI 1997/831, reg 11(3): see PARA 564.

<sup>3</sup> Lifts Regulations 1997, SI 1997/831, reg 20.

<sup>4</sup> Lifts Regulations 1997, SI 1997/831, reg 21(1). As to the standard scale see PARA 853 note 29.

<sup>5</sup> Lifts Regulations 1997, SI 1997/831, reg 21(2).

<sup>6</sup> Lifts Regulations 1997, SI 1997/831, reg 22(1).

<sup>7</sup> Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it: Lifts Regulations 1997, SI 1997/831, reg 22(3).

8 Lifts Regulations 1997, SI 1997/831, reg 22(2).

9 Lifts Regulations 1997, SI 1997/831, reg 22(4).

10 Lifts Regulations 1997, SI 1997/831, reg 23(1). Where a body corporate is guilty of an offence under the 1997 regulations (including where it is so guilty by virtue of reg 23(1)) in respect of any act or default which is shown to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly: reg 23(2). Where the affairs of a body corporate are managed by its members, reg 23(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 23(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.



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### **885. Personal protective equipment.**

Any person who contravenes or fails to comply with the general duties regarding the marketing and supply of personal protective equipment<sup>1</sup> is guilty of an offence<sup>2</sup> and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or to both<sup>3</sup>.

Subject to the following provisions, in proceedings against any person for such an offence it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>4</sup>. Where in any proceedings against any person for such an offence the defence so provided involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, that person is not, however, entitled without leave of the court to rely on the defence unless, not less than seven clear days before the hearing of the proceedings he has served notice<sup>5</sup> on the person bringing the proceedings<sup>6</sup>. Furthermore, a person is not entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all circumstances for him to have relied on the information, having regard in particular:

- 1848 (1) to the steps which he took and those which might reasonably have been taken, for the purposes of verifying the information; and
- 1849 (2) to whether he had any reason to disbelieve the information<sup>7</sup>.

Where the commission by any person of such an offence is due to an act or default committed by some other person in the course of any business of his, the other person is guilty of the offence and will be proceeded against and punished by virtue of this provision whether or not proceedings are taken against the first-mentioned person<sup>8</sup>.

1    Ie the Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 8 or reg 9: see PARA 567.

2    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 17.

3    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 18. As to the standard scale see PARA 853 note 29. In England and Wales, a magistrates' court may try an information in respect of an offence committed under the 2002 regulations if the information is laid within 12 months from the time when the offence is committed: reg 16(1), Sch 10 para 1(d).

4    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 19(1).

5    A notice under this provision must give such information identifying or assisting in the identification of the persons who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it: Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 19(3).

6    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 19(2).

7    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 19(4).

8    Personal Protective Equipment Regulations 2002, SI 2002/1144, reg 20(1). Where a body corporate is guilty of an offence under the 2002 regulations (including where it is so guilty by virtue of reg 20(1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is

guilty of that offence and is liable to be proceeded against and punished accordingly: reg 20(2). Where the affairs of a body corporate are managed by members, reg 20(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 20(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

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### **886. Equipment etc intended for use in potentially explosive atmospheres.**

Any person who contravenes or fails to comply with any relevant regulation relating to placing on the market or putting into service of equipment etc intended for use in potentially explosive atmospheres<sup>1</sup> is guilty of an offence<sup>2</sup> and liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months or to both, and on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both<sup>3</sup>.

Subject to the following provisions, in proceedings against any person for any such offence it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>4</sup>. Where in any proceedings against any person for such an offence the defence so provided involves an allegation that the commission of the offence was due to the act or default of another or to reliance on information given by another, that person is not, however, entitled to rely on the defence without the leave of the court unless, not less than seven clear days before the hearing of the proceedings, he has served a notice on the person bringing the proceedings<sup>5</sup>. Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it<sup>6</sup>. A person is not, however, entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular:

- 1850 (1) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 1851 (2) to whether he had any reason to disbelieve the information<sup>7</sup>.

Where the commission by any person of such an offence is due to an act or default committed by some other person in the course of any business of his, the other person is guilty of the offence and may be proceeded against and punished by virtue of this provision whether or not proceedings are taken against the first-mentioned person<sup>8</sup>.

<sup>1</sup> le who contravenes or fails to comply with the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 6, reg 7 or reg 8: see PARA 569.

<sup>2</sup> Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 16.

<sup>3</sup> Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 17 (substituted by SI 2005/830). As to the statutory maximum see PARA 853 note 9.

<sup>4</sup> Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 18(1).

<sup>5</sup> Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 18(2).

<sup>6</sup> Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 18(3).

7 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 18(4).

8 Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192, reg 19(1). Where a body corporate is guilty of an offence under the 1996 regulations (including where it is so guilty by virtue of reg 19(1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: reg 19(2). Where the affairs of a body corporate are managed by its members, reg 19(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 19(3). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

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### **887. Good laboratory practice.**

Any operator<sup>1</sup> of a test facility<sup>2</sup> who fails to comply with a warning notice served under the Good Laboratory Practice Regulations 1999<sup>3</sup>, is, unless that notice has been withdrawn by the Good Laboratory Practice Monitoring Authority ('GLPMA')<sup>4</sup> or cancelled by a court, guilty of an offence<sup>5</sup>.

A person who in the course of enforcing compliance with those regulations gains access to commercially sensitive or other confidential information is guilty of an offence if, without lawful authority, he discloses that information<sup>6</sup>. A person may, however, disclose commercially sensitive or other confidential information to which he has had access in the course of enforcing compliance with those regulations to:

- 1852 (1) the European Commission;
- 1853 (2) a monitoring authority<sup>7</sup>;
- 1854 (3) a regulatory authority<sup>8</sup>;
- 1855 (4) a police force;
- 1856 (5) a test facility or sponsor<sup>9</sup> concerned with the inspection or study audit during the course of which the GLPMA gained access to that information<sup>10</sup>.

Subject to an exception if a person might incriminate himself or his spouse<sup>11</sup>, any person who:

- 1857 (a) intentionally obstructs a person appointed by the GLPMA in accordance with the relevant regulations<sup>12</sup>, or who without reasonable cause fails to comply with any requirement made of him by a person so appointed, in circumstances where that person is acting in pursuance of any of his functions under those regulations; or
- 1858 (b) any person who, in purported compliance with any such requirement as is mentioned in head (a) above, intentionally or recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence<sup>13</sup>.

A person who makes a false good laboratory practice instrument<sup>14</sup> or makes a copy of an instrument which is, and which he knows or believes to be, a false good laboratory practice instrument, with the intention that he or another is to use it to induce a regulatory authority to accept it as a genuine good laboratory practice instrument or a copy of a genuine good laboratory practice instrument is guilty of an offence<sup>15</sup>. A person who has in his possession a false good laboratory practice instrument which he knows or believes to be a false good laboratory practice instrument or a copy of an instrument which he knows or believes to be a false good laboratory practice instrument, with the intention that he or another is to supply it to a regulatory authority with the intention of inducing the regulatory authority to accept it as a genuine good laboratory practice instrument or a copy of a genuine good laboratory practice instrument is also guilty of an offence<sup>16</sup>.

A person who supplies to a regulatory authority a false good laboratory practice instrument which he knows or believes to be a false good laboratory practice instrument or a copy of an instrument which he knows or believes to be a false good laboratory practice instrument, with

the intention of inducing the regulatory authority to accept it as a genuine good laboratory practice instrument or a copy of a genuine good laboratory practice instrument is guilty of an offence<sup>17</sup>.

With certain exceptions<sup>18</sup>, a person guilty of any offence under the above provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or both<sup>19</sup>.

Where an offence under these provisions is committed by a body corporate or Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, partner or similar officer of the body corporate or Scottish partnership or any person who was purporting to act in any such capacity, he as well as the body corporate or Scottish partnership is to be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly<sup>20</sup>.

In any proceedings for an offence under any of the above provisions, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>21</sup>.

1 As to the meaning of 'operator' see PARA 580 note 4.

2 As to the meaning of 'test facility' see PARA 580 note 3.

3 I.e a notice served under the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 7(2): see PARA 581.

4 As to the GLPMA see PARA 580.

5 See the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 7(3); and PARA 581.

6 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 10(1). For these purposes, (1) the names of test facilities or test sites which are or have been subject to an inspection as part of the UK GLP compliance programme (see PARA 580); (2) the level of adherence of a test facility or test site to the principles of good laboratory practice of those laboratories as assessed by the GLPMA; and (3) the dates upon which study audits or test facility or test site inspections have been conducted, are not to be considered to be confidential: reg 10(3).

7 'Monitoring authority' means an authority in any country or territory which is responsible (either solely or jointly with other such authorities) for monitoring the good laboratory practice compliance of test facilities: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1).

8 As to the meaning of 'regulatory authority' see PARA 580 note 1.

9 'Sponsor' means a person who commissions, supports and/or submits a regulatory study: Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 2(1). As to the meaning of 'regulatory study' see PARA 580 note 1.

10 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 10(2).

11 I.e subject to the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 11(2). Nothing in reg 11(1)(a)(ii) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him or, in the case of a person who is married or a civil partner, his spouse or civil partner: reg 11(2) (amended by SI 2005/2114).

12 I.e appointed under the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 3(4): see PARA 580.

13 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 11(1). A person guilty of an offence under reg 11(1)(a) (see head (a) in the text) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 15(a). As to the standard scale see PARA 853 note 29.

14 A good laboratory practice instrument is 'false' for these purposes if (1) it is not that which it purports to be for any reason including where (a) it purports to have been made by a person who did not make it; (b) it purports to have been made in the form in which it is made by a person who did not in fact make it in that form; (c) it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or (2) it includes information which is false or misleading in a material particular, and

a person is to be treated for these purposes as making a false good laboratory practice instrument if he alters a good laboratory practice instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration): Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 12(4).

15 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 12(1). A person may be guilty of an offence under reg 12(1) if the regulatory authority is outside the United Kingdom: reg 12(5)(a). A person guilty of an offence under reg 12 is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both: reg 15(b). As to the meaning of 'United Kingdom' see PARA 305 note 8; and as to the statutory maximum see PARA 853 note 9.

16 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 12(2). A person may be guilty of an offence under reg 12(2) if the regulatory authority is outside the United Kingdom: reg 12(5)(a). As to the penalty see note 15.

17 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 12(3). A person may be guilty of an offence under reg 12(3) if the supply is from outside the United Kingdom to a United Kingdom regulatory authority or from within the United Kingdom to a regulatory authority outside the United Kingdom: reg 12(5)(b). As to the penalty see note 15.

18 See the Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 15(a), (b); and notes 13, 15.

19 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 15(c).

20 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 13. As to the meaning of 'consent or connivance' cf PARA 860 note 3.

21 Good Laboratory Practice Regulations 1999, SI 1999/3106, reg 14.

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## **(7) OFFENCES IN CONNECTION WITH ENFORCEMENT OF REACH REGULATION**

### **888. Offences under REACH Enforcement Regulations 2008.**

It is an offence for a person (1) intentionally to obstruct an authorised person<sup>1</sup> in the exercise or performance of the powers or duties<sup>2</sup> of the authorised person; or (2) to make a statement which that person knows to be false or misleading in a material particular or recklessly and which is false or misleading in a material particular, where the statement is made in purported compliance with a listed REACH provision<sup>3</sup> or with a requirement to furnish any information imposed by or under the REACH Enforcement Regulations 2008<sup>4</sup>.

Where an authorised person exercises the powers of enforcement under the 2008 regulations<sup>5</sup>, it is an offence for a person (a) to fail to comply with any requirement imposed by or made under those powers or a prohibition notice, improvement notice or enforcement notice<sup>6</sup>; (b) to fail or refuse to provide facilities or assistance or to permit any inspection, when reasonably required by an authorised person; or (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer<sup>7</sup>.

It is an offence for a person to pretend to be an authorised person<sup>8</sup>.

It is an offence for a person to disclose the information described below where (i) that person received that information from the Commissioners for Revenue and Customs; and (ii) the disclosure has not been made with the prior consent of the Commissioners or pursuant to a legal obligation<sup>9</sup>. The information referred to above is information which relates to a person whose identity is specified in the disclosure or may be deduced from the disclosure, but excludes information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others)<sup>10</sup>.

Where a person is convicted of an offence under the 2008 regulations<sup>11</sup> in respect of any matters which appear to the court to be matters which it is in that person's power to remedy, the court may order the person convicted, in addition to or instead of imposing any punishment and within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the matters in respect of which the person was convicted<sup>12</sup>. Where a person is ordered to remedy any matters, that person is not liable for an offence<sup>13</sup> in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed<sup>14</sup>.

Where an offence is committed by a body corporate and (A) it is committed with the consent or connivance of an officer<sup>15</sup>; or (B) it is attributable to any neglect on the officer's part, the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>16</sup>. If the affairs of a body corporate are managed by its members, this applies in relation to the acts or defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate<sup>17</sup>.

No criminal proceedings for an offence under the 2008 regulations may, in England and Wales, be instituted except by an enforcing authority<sup>18</sup> or by or with the consent of the Director of Public Prosecutions<sup>19</sup>. However, where an authorised person is authorised in that behalf by the



Health and Safety Executive, that person may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence committed under the 2008 regulations<sup>20</sup>.

No contravention by the Crown of the 2008 regulations makes the Crown criminally liable but the High Court may on the application of an enforcing authority declare unlawful any act or omission of the Crown which constitutes a contravention of those regulations<sup>21</sup>. Nevertheless, the regulations apply to persons in the public service of the Crown as they apply to other persons<sup>22</sup>.

If an enforcing authority is of the opinion that proceedings against a person for an offence under the 2008 regulations would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings against that person for the purpose of seeking such remedy as the enforcing authority believes is appropriate in the circumstances<sup>23</sup>.

1 As to the meaning of 'authorised person' see PARA 577 note 3.

2 For these purposes, 'powers or duties' includes powers or duties exercisable by virtue of a warrant: REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(8).

3 As to the meaning of 'listed REACH provision' see PARA 574 note 5.

4 REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(1). As to those regulations see PARAS 574-579. A person guilty of an offence under reg 13 is liable, on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months, or both, and on conviction on indictment, to a fine or imprisonment not exceeding two years, or both: reg 14. As to the statutory maximum see PARA 853 note 9.

5 Ie under the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6: see PARAS 577-578.

6 Ie a notice described in the REACH Enforcement Regulations 2008, SI 2008/2852, Sch 6: see PARA 578.

7 REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(2). As to the penalty see note 4. It is a defence for a person charged with an offence under reg 13(2) to prove that he had a reasonable excuse for the matters with which he is charged: reg 13(3).

8 REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(4). As to the penalty see note 4.

9 REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(5). As to the penalty see note 4. It is a defence for a person charged with an offence under reg 13(5) to prove that he believed that (1) the disclosure was lawful; or (2) the information had already and lawfully been made available: reg 13(7). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

10 REACH Enforcement Regulations 2008, SI 2008/2852, reg 13(6).

11 Ie under the REACH Enforcement Regulations 2008, SI 2008/2852, Pt 5 (regs 11-16).

12 REACH Enforcement Regulations 2008, SI 2008/2852, reg 16(1), (2). The time fixed by an order under reg 16(2) may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or extended under reg 16(3), as the case may be: reg 16(3).

13 Ie under the REACH Enforcement Regulations 2008, SI 2008/2852, reg 11 or reg 13.

14 REACH Enforcement Regulations 2008, SI 2008/2852, reg 16(4).

15 'Officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: REACH Enforcement Regulations 2008, SI 2008/2852, reg 15(2). As to the meaning of 'consent or connivance' cf PARA 860 note 3.

16 REACH Enforcement Regulations 2008, SI 2008/2852, reg 15(1).

17 REACH Enforcement Regulations 2008, SI 2008/2852, reg 15(3).

18 As to the meaning of 'enforcing authority' see PARA 574 note 4.

- 19 REACH Enforcement Regulations 2008, SI 2008/2852, reg 18(1).
- 20 REACH Enforcement Regulations 2008, SI 2008/2852, reg 17(1).
- 21 REACH Enforcement Regulations 2008, SI 2008/2852, reg 19(1).
- 22 REACH Enforcement Regulations 2008, SI 2008/2852, reg 19(2).
- 23 REACH Enforcement Regulations 2008, SI 2008/2852, reg 20.